

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76184

AT AUCKLAND

Before: A R Mackey (Chairperson)
M L Robins (Member)

Counsel for the Appellant: D Mansouri-Rad

Appearing for Department of Labour: J Hopkins

Date of Hearing: 4 & 5 June 2008

Date of Decision: 14 July 2008

DECISION DELIVERED BY M L ROBINS

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (“RSB”) of the Department of Labour (“the Department”), cancelling the refugee status of the appellant pursuant to section 129L(1)(b) of the Immigration Act 1987 (“the Act”).

[2] The appellant, AA, is an Iranian woman aged in her mid-50’s who sought refugee status on her arrival in New Zealand on 22 February 2001. The essence of her claim was twofold:

- (a) that her husband, a political activist who had been told his name was on a blacklist, was being sought by the Iranian authorities after he was discovered distributing political leaflets; and
- (b) that she was known to the Iranian authorities, not only because of her connection with her husband, but also because of her own political profile.

[3] After being interviewed by the RSB on 11 June 2001, AA was granted refugee status in a decision dated 27 November 2001. AA’s husband BB and the couple’s two daughters arrived in New Zealand on [deleted] 2002. AA was

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granted permanent residence on 3 May 2002. Her husband and daughters were included in the grant.

[4] On 24 August 2007, AA was served with a Notice of Application for Determination Concerning Loss of Refugee Status, pursuant to s129L(1)(b) of the Act ("the Notice").

JURISDICTION

[5] Before turning to the facts leading to the issue of the Notice, we restate the essential jurisdiction of the Authority in respect of what are colloquially termed "cancellation" proceedings.

[6] Section 129L(1)(b) of the Act provides that refugee status officers have the function of:

"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 grant the person as a refugee in such a case if appropriate".

[7] Pursuant to s129O(2) of the Act, a decision of a refugee status officer under s129L(1)(b) of the Act to cease to recognise a person as a refugee gives rise to a right of appeal to the Authority.

[8] In determining appeals against decisions to cease to recognise a person as a refugee, the legislation requires the Authority to adopt a two-stage test. It must first determine whether the refugee status "may have been" procured by fraud, forgery, false or misleading representation, or concealment of relevant information (hereafter collectively called "fraud" for convenience). If so, and only if so, it must then determine whether to "cease to recognise" the person as a refugee. See *Refugee Appeal No 75392* (7 December 2005), refer [10]-[12]. This second limb of the test is the Authority's standard forward-looking enquiry into whether the person is, at the date of determination, a refugee.

[9] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of the burden or onus of proof. Nonetheless, it is the Authority's view that, in cancellation proceedings, it is the responsibility of the Department to present such evidence in its possession by which it can responsibly be said that

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the grant of refugee status may have been procured by fraud. It is also our view that the term “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006) refer [20].

EVENTS SINCE THE GRANT OF REFUGEE STATUS

[10] It will be recalled that AA was granted refugee status on 27 November 2001. She claimed in her application for status that she and her husband and their two children had escaped from Iran to Dubai. They had planned to travel from Dubai to New Zealand together but this proved impossible when the agent arranging their travel demanded too much money. A decision was made that AA would travel to New Zealand on her own and that her husband would return to Iran with the children. At the time of AA’s refugee application, her husband and two children were in hiding in Iran, awaiting the outcome of her refugee application in New Zealand. She claimed that, at one point, BB’s whereabouts was discovered by the Iranian authorities but he managed to escape and find fresh sanctuary within Iran. BB, she claimed, was being targeted by quasi-governmental organisations including the *Basij*, *Sepah* and *Hezbollah*, and by the Iranian authorities such as the *Ettelaat*. She said he had been told he was on a government “blacklist”.

[11] After the grant of refugee status AA, BB and the couple’s two daughters completed medical and other New Zealand visa formalities. On [deleted] 2002 BB and the daughters departed Iran through Mehrabad airport on BB’s Iranian passport, issued in 1999, and travelled to New Zealand. Some years later, from [deleted] 2006 to [deleted] 2006, BB returned to Iran, after having obtained an extension to his Iranian passport from the Iranian Embassy in Wellington.

THE ISSUE OF THE NOTICE

[12] The Notice, issued on 24 August 2007, alleged that BB legally departed Iran through Mehrabad Airport on [deleted] 2002, despite being on a travel blacklist, being actively pursued by the authorities, and a lengthy period in hiding prior to his travel.

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[13] According to the Notice, the fact of and the means of his departure indicated to the Department that BB may not have been a person of interest to the Iranian authorities on the date of the refugee determination of his wife (27 November 2001) and thus her refugee status may have been procured by fraud.

[14] AA accepted the Department's offer of interview. She and her husband provided written statements and were interviewed separately on 30 and 31 October 2007.

[15] AA's refugee status was cancelled in a decision dated 18 January 2008, leading to the present appeal.

THE CASE FOR THE DEPARTMENT

[16] For the Department, Mr Leslie confirmed he was the refugee status officer who interviewed AA and BB and that he issued the decision cancelling the grant of refugee status.

[17] The Department's case, in relation to the first stage of the two-stage test (whether AA's refugee status was procured by fraud) was that AA's fear of persecution was inherently based on BB's serious political involvement and risks that flowed to the family from that. The Department submitted that the following circumstances indicated that the claims about BB's serious political involvement were untrue, and that the first stage of the test was therefore met:

- (a) BB obtained a genuine Iranian passport from his home city (Z) in 1999 (a time when, according to AA he was on a blacklist and under constant attack, persecution and harassment by the *Komiteh* and the regime's officials). The passport was stamped with an exit visa allowing multiple exits from Iran.
- (b) BB was able to depart through Mehrabad airport in [deleted] 2002 on his Iranian passport, despite the layers of airport security checks.
- (c) In the months before his departure (when AA alleged he was in hiding) BB managed to visit Tehran with his daughters to complete medical and other formalities necessary for the issue of New Zealand visas. He had

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documents relating to the visa applications delivered to his home address in Z.

- (d) BB returned to Iran in 2006 and stayed there for [deleted] months. He arrived and departed through Mehrabad airport without incident. No interest was shown in him during his stay, despite the fact that he resided in his parents' home in Z.

[18] During its investigations, the Department also discovered that AA had been issued with a [deleted] "X" passport on [deleted] 2003. The Department submitted that if AA had obtained [deleted] X *citizenship* before she was granted refugee status on 27 November 2001, the refugee status would have been procured by fraud. The Department noted that AA had refused to sign a privacy waiver which would have enabled them to ascertain when her [deleted] X citizenship had been obtained.

[19] [deleted] Mr Leslie said that, on his reading of AA's statement (referred to below) and the country information, AA was entitled to [deleted] X citizenship [deleted] *before* she applied for refugee status in New Zealand.

[20] In relation to the second stage of the test, the Department also submitted that a finding of fraud in the first stage may impact on the Authority's assessment of AA's credibility in the second stage.

THE CASE FOR THE APPELLANT

[21] AA does not resile from her refugee claim. In relation to the first stage of the two-stage test, she does not accept that the concerns raised by the Department in its Notice justify a finding that her refugee status may have been procured by fraud. She maintains that her refugee status was not procured by fraud.

[22] Counsel for AA argued that just because a person (such as BB) is issued a passport, does not necessarily mean that the person is not in danger of persecutory treatment in their home country. Mr Mansouri-Rad noted the existence of various parallel and independent security forces operating in Iran and emphasised that BB had never been formally arrested or charged with any offence.

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[23] In relation to his ability to leave Iran through Mehrabad airport, BB gave evidence that his departure was arranged by an agent who bribed an airport official.

[24] In relation to his ability to complete the visa processing steps before leaving Iran, BB confirmed that he was in hiding and said he took precautions when he went out. He acknowledged that the visa documents were sent to his father's home address but said he did not live there. He said he relied on his mother to convey information and documentation to him.

[25] In relation to his travel to Iran in 2006, BB said his father was unwell at that time. He said that before leaving New Zealand he contacted an agent who made enquiries about whether he was still on a blacklist. This agent indicated that it would be relatively safe for BB to return. Moreover, BB (who had gained New Zealand citizenship by this time) advised his family that if he got into trouble in Iran, they should contact the New Zealand government and ask them to assist. He said that while in Iran he did not stay at his family's home but moved around. Counsel submitted that because BB had not been politically active since arriving in New Zealand, it was reasonable to assume that the Iranian authorities' interest in him would be at a lower level than it was when he departed in [deleted] 2002.

[26] In relation to her [deleted] X citizenship, AA said that, strictly speaking, she was not entitled to [deleted] X citizenship because her name and correct identity details had not been registered with the [deleted] authorities. Counsel acknowledged that AA was, at least in theory, entitled to [deleted] X citizenship [deleted].

[27] AA gave evidence that [deleted] Mr Mansouri-Rad submitted that the issue may be purely academic because [deleted].

[28] Just before the hearing in the Authority, and after the Department had filed its evidence and submissions, AA provided a written statement. In this statement she asserted that her [deleted] X passport had been issued using the birth certificate of her deceased sister, CC who had died a few months before AA was born. She claimed that [deleted]. To corroborate this assertion, she pointed to her translated Identity Card submitted at the time of her refugee claim (on the Department file) that stated she was born in Y in 1954. She said the place and date of birth stated in the [deleted] X passport were those of her deceased sister, i.e. X in 1949.

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[29] Apart from country information, AA provided a number of hospital admission documents plus translations confirming BB's father's admission to hospital in Iran in [deleted] 2006.

[30] In relation to the second stage of the legislative test (whether, at the date of this determination, the appellant is a refugee), in her written statement filed just before the hearing and after the Department had filed its evidence and submissions, AA claimed to have converted to Christianity. She called three members of the Church of Jesus Christ of Latter Day Saints on the Auckland North Shore. These witnesses testified at the hearing that AA's conversion to Christianity was genuine and enduring, and that AA had been actively involved in the Church since as early as 2005.

SUBMISSIONS

[31] Both parties filed written submissions before the hearing. At the conclusion of the hearing, the Department sought leave to file further written submissions. In particular it sought an opportunity to investigate [deleted] the appellant's X citizenship. Leave was granted. The Department filed its submissions on 12 June 2008 and Mr Mansouri-Rad filed submissions in reply on 19 June.

[32] In its closing submissions, the Department did not provide any country information [deleted] about the appellant's [deleted] X citizenship. The thrust of the Department's submissions was that AA and her husband were not credible witnesses and that AA:

"had nothing more than minor involvement with political activities whilst in Iran. The authorities were not interested in her. She did not have a fear of persecution because of her political opinion."

[33] In his closing submissions, Mr Mansouri-Rad responded to each of the credibility concerns raised by the Department and submitted that the Department:

"had not produced any evidence to challenge the evidential foundation of the decision of 27 November 2001 granting the appellant refugee status."

THE FIRST STAGE – THE ASSESSMENT OF “MAY HAVE BEEN”

[34] It will be recalled that responsibility for establishing that a person's refugee status “may have been” procured by fraud rests with the Department.

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[35] With the exception of the issue of [deleted] X citizenship (which is addressed shortly), it is clear that the refugee status officer who granted refugee status to AA in 2001 either considered or had the opportunity to consider all of the information which the Department now puts forward to support the cancellation of refugee status.

[36] The relevant part of the 2001 decision reads:

“AA has been involved in propaganda and protests in support of labour groups espousing Marxist beliefs which clearly are not in accordance with the principles of the Islamic regime in Iran. AA has stated that the authorities visited her home in search of her husband, and when they discovered his absence, they detained and interrogated her on a number of occasions, in order to question her about his activities and those of her brother and sister-in-law. AA has not indicated that the Iranian authorities were directly interested in her own political activities.

Even if the authorities have not expressed particular interest in AA herself in the past, they have mistreated her as a close relative of a man in whom they are demonstrably interested. It is considered that this mistreatment, in the form of arbitrary detention, and physical abuse, has amounted to persecution.

Professor Hathaway has stated that:

“Where evidence of past maltreatment exists [...] it is unquestionably an excellent indicator of the fate that may await an applicant upon return to [her] home. Unless there has been a major change of circumstances within that country that makes prospective persecution unlikely, past experience under a particular regime should be considered probative of future risk.”

The fact that the Iranian authorities having recently discovered AA’s husband in the physical act of distributing anti-regime material, compounds the reality of the risk that AA will face persecution at the hands of the authorities once again. The risk is heightened all the more by the news AA has received even more recently, outlining the authorities’ discovery of her husband’s hiding place. In addition to this is the fact that AA’s husband’s family is well-known as a politically active one. Members of the [BB] [sic] family have been arrested, detained, imprisoned, and some also executed for their involvement with the [deleted] group and other causes viewed as anti-regime.

Even without the relationship she has with a known political dissident, AA has exhibited anti-regime behaviour in her own right, and the strength of her belief in the cause of labourers in Iran makes it impossible to conclude that she will never be arrested in the future on account of her own activities. It is considered likely that AA will continue to support the cause if she returns to Iran, and therefore, there is a real chance that her activities will come to the attention of the authorities. The relationship AA has with her husband and his family, and her past history with the authorities only serves to augment the risk to her. AA has supported a changed system in Iran for some years, and shows no indication of altering her beliefs or ceasing to work in promotion of them.” (emphasis added by the Authority)

[37] This decision makes it clear that AA was granted refugee status *because of her own political views and activities*. The refugee status officer expressly states that her husband’s political history “only serves to augment the risk to her”. Even if her husband obtained a passport in 1999, organised his residence application in 2001 and departed legally in 2002, these facts do not, in and of themselves,

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demonstrate that he was not politically active and not of interest to the Iranian authorities. In other words, these facts do not demonstrate that AA's evidence to the RSB may have been untrue.

[38] The refugee status officer did not, at any point of the refugee assessment process, ask AA if or when her husband obtained an Iranian passport. She did enquire about the appellant's passport to which question AA answered truthfully that her passport was renewed by the Iranian government in 2000. The refugee status officer accepted the plausibility of AA renewing her passport "despite her political activity". There is, in relation to AA's alleged failure to volunteer information about her husband's passport, no evidence whatsoever of fraud. She simply was not asked about it. Mr Leslie accepted in cross-examination the suggestion that she should have been asked, and said that, in his view, the failure to do so was an oversight.

[39] Having carefully read the 2001 decision, the Authority observes that a different refugee status officer or the Authority itself, may well have made more rigorous enquiries or adopted a more rigorous assessment of the evidence and may, justifiably, have concluded that AA did not have a well-founded fear of being persecuted. The fact is, however, that the refugee status officer who interviewed AA did not consider it necessary to carry out a more rigorous investigation (for example whether BB had been issued an Iranian passport) and she may, in the view of others, have adopted a relatively generous (but equally justified) view of the facts. Based on that assessment the officer was entitled to conclude that there was a well-founded fear.

[40] We find there is an absence of evidence of fraud in this case. It is simply not established on any of the grounds. Specifically, in relation to the issue of AA's [deleted] X citizenship, there is no evidence before the Authority that she could have or did apply for [deleted] X citizenship before she was granted refugee status in November 2001. Cancellation proceedings are not an opportunity for the RSB to revisit decisions it now perceives may have been wrongly decided.

THE SECOND STAGE – WHETHER THE APPELLANT IS, TODAY, A REFUGEE

[41] While the Authority found the conversion to Christianity genuine and credible, having found that the refugee status was not procured by fraud, there is

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now no necessity to enquire into the second stage of the test – whether AA is today a refugee.

CONCLUSION

[42] The following determination is made:

- (a) The appellant's refugee status was not procured by fraud, forgery, false or misleading representation or concealment of relevant information; and
- (b) It is inappropriate therefore to cease to recognise the appellant as a refugee.

[43] The appeal is granted.

"M L Robins"

M L Robins
Member

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