

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

**REFUGEE APPEAL NO 76086**

**AT AUCKLAND**

<b><u>Before:</u></b>	A N Molloy (Member)
<b><u>Counsel for the Appellant:</u></b>	C Curtis
<b><u>Appearing for the Department of Labour:</u></b>	T Thompson
<b><u>Dates of Hearing:</u></b>	27, 28, 29 November 2007
<b><u>Date of Decision:</u></b>	26 February 2008

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**DECISION**

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**INTRODUCTION**

[1] The appellant, an Iranian man in his mid-20s, was granted refugee status in September 2000. He appeals from a decision made by a refugee status officer under s129L(1)(b) of the Immigration Act 1987 ("the Act"), ceasing to recognise the grant to him of refugee status.

[2] For the purposes of his refugee application, the appellant claimed that he had fled overland from Iran to Turkey, using a false passport under an assumed name. It has since become apparent that, contrary to his earlier claim, he left Iran lawfully by air using his own Iranian passport.

[3] It has also become apparent that the appellant returned to Iran in 2004, four years after he obtained refugee status in New Zealand. The Department of Labour (DOL) asserts that his ability and willingness to return to the country from

which he had sought protection four years earlier is inconsistent with the claim he made in order to obtain refugee status in 2000.

[4] In this context, the Refugee Status Branch (RSB) commenced proceedings to “cancel” the appellant's grant of refugee status. After interviewing the appellant in May 2007, the RSB issued a decision dated 27 June 2007 in which it found that his refugee status may have been procured by fraud, forgery, false or misleading misrepresentation or concealment of relevant information (“fraud”). It is from that decision that the appellant now appeals.

### **JURISDICTION**

[5] Section 129L(1) of the Act outlines the various functions of refugee status officers. These include:

“(b) 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] Where a refugee status officer ceases to recognise a person's refugee status in exercising their function under that section, that person is entitled to appeal to the Authority under s129O(2) of the Act, which provides that:

“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.”

[7] Accordingly there are two stages to the Authority's enquiry. It must first determine whether the appellant's refugee status “may have been” procured by fraud.

[8] Because the hearing of an appeal of this nature is largely inquisitorial, it is not entirely appropriate to refer to a burden or onus of proof as those are terms which sit more comfortably within an adversarial context. However, the Authority's view is that in cancellation proceedings, the DOL has the responsibility to present such evidence as it has in its possession by which it can be said that the grant of refugee status “may have been” procured by fraud, forgery, false or misleading representation or concealment of relevant information. In that connection, the

Authority has previously found that “may have been” does not require the Authority to find that refugee status was procured by fraud:

“...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.” *Refugee Appeal No 75563* (2 June 2006) [20].

[9] If so satisfied after considering any evidence adduced by the appellant, the Authority will then move to the second stage of the enquiry: whether to “cease to recognise” the appellant as a refugee or (for ease of reference) to “cancel” his refugee status. This will not automatically follow from a finding that refugee status may have been procured by fraud. Rather, it depends upon whether the appellant currently meets the criteria for refugee status. This second stage requires the Authority to undertake its orthodox enquiry into whether the respondent satisfies the definition of a refugee as set out in the Refugee Convention; *Refugee Appeal No 75392* (7 December 2005) [10]-[12]. This part of the inquiry will only be undertaken where the first element is established.

[10] In order to properly assess the issues which arise from this appeal, it is necessary to set out the basis upon which the appellant obtained refugee status. This is summarised below. The Authority also sets out the basis upon which the RSB reached its decision to cancel the appellant’s refugee status, and the basis upon which the appellant appeals.

#### The appellant's original claim for refugee status

[11] The appellant claimed that he was forced to flee from Iran in July or August 1999 because of his association with a member of the Baha’i faith. His difficulties began in around 1996, when the appellant’s cousin became engaged to marry the sister of F, who was the appellant’s best friend and neighbour. The Iranian authorities began to suspect that the cousin had converted to the Baha’i faith, because F and his sister were Baha’i. The cousin and his wife (F’s sister) later fled and the appellant was detained and questioned about them.

[12] This harassment resumed in early 1998. F and the appellant were detained by the authorities for relatively trivial matters unconnected to the marriage of the appellant’s cousin. However, the appellant was again questioned about his cousin’s whereabouts and activities.

[13] In August 1998, F's father was murdered. The appellant believes that the Iranian authorities were responsible for his death. Shortly afterwards, F's family began to receive anonymous and abusive telephone calls during which threats were made to F's life.

[14] In around May 1999, the appellant and F were both detained and mistreated by the Iranian authorities. The appellant was interrogated about F and his family. The appellant's father was also detained and interrogated at the same time. The following month (June 1999), F was at the appellant's house when he and the appellant observed the Iranian authorities raid F's family home.

[15] In his statement lodged with the RSB in September 2000, the appellant stated that he was not absolutely sure which branch of the authorities conducted the searches, but believed that they were probably from the Security Intelligence.

[16] F and the appellant left the area and went to stay with the appellant's uncle in the south of Tehran for a few days. During that period, the appellant's father and his older brother were detained by the Iranian authorities. They were questioned as to the whereabouts of the appellant and F before being released a week later. In the meantime, F was collected from his hiding place by family members and the appellant relocated to a different hiding place in Karaj, about two hours away from his home in Tehran.

[17] In around July or August 1999, the appellant left Iran unlawfully by crossing the land border into Turkey. He used a false passport. He then spent several months in various Asian countries before making his way to New Zealand, where he arrived in April 2000, using another false passport provided to him by an agent.

[18] When asked by the refugee status officer at the interview "What do you fear?", the appellant is recorded as having answered:

"How can I explain to you - most definitely they will kill me - but they will first torture me which is frightening."

[19] After interviewing the appellant on 13 September 2000, the RSB issued a decision, dated 18 September 2000, granting the appellant refugee status. It found that the appellant had a well-founded fear of being persecuted in Iran because of his association with members of the Baha'i faith and because he could be charged with apostasy if he returned to Iran. It also found that if he were to return to Iran without a legal and valid Iranian travel document, the Iranian authorities would inevitably perform a background check on the appellant. This

would bring to light the fact that the appellant was a fugitive and lead to his apprehension.

[20] The appellant was subsequently granted permanent residence in New Zealand and is now a New Zealand citizen.

#### Notice of Intended Determination concerning Loss of Refugee Status

[21] On 30 January 2007, more than six years after the appellant was granted refugee status, a (different) refugee status officer issued a "Notice of Intended Determination Concerning Loss of Refugee Status" (the Notice) which was served upon the appellant on 28 February 2007. The Notice advised the appellant that the refugee status officer intended making a determination which may result in the loss of his refugee status. It identified various grounds which can be paraphrased as follows:

- (a) The appellant was issued with an Iranian passport in Tehran, Iran in January 2000 (approximately six months after he had previously claimed that he had fled from Iran).
- (b) That passport bears exit stamps which demonstrate that the appellant left Iran lawfully through Mehrabad Airport in Tehran in 2000. This contradicts his earlier claim to have left Iran unlawfully in July 1999, by land, into Turkey. It also contradicts his claim to have been in hiding in Malaysia in January 2000.
- (c) On 19 July 2002, the appellant was issued with a multiple exit permit by the Iranian Embassy in Wellington.
- (d) The appellant returned to Iran without difficulty on 24 July 2004 and departed Iran, again without difficulty, on 21 September 2004, on each occasion using his Iranian passport.

#### Appellant's response to the Notice

[22] The appellant responded to the Notice by denying that he had procured refugee status by fraud. He submitted a statement dated 13 April 2007 and subsequently attended an interview with a refugee status officer in May 2007.

[23] The refugee status officer subsequently issued a decision dated 27 June 2007 in which he concluded 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.

[24] The appellant appeals against that decision.

#### The DOL's case on appeal

[25] The DOL's case comprises the documentary evidence compiled during the course of its determination in connection with the loss of refugee status. These documents encompassed the appellant's claim for refugee status, his subsequent acquisition of residence in New Zealand and his return to Iran.

[26] The DOL called one witness, Wayne Newth. Mr Newth is the refugee status officer who made the decision to cancel the appellant's refugee status. He gave evidence in person and confirmed the content of a written statement dated 9 November 2007 which he had prepared for the purposes of the appeal.

[27] Counsel for the DOL provided written submissions in advance of the hearing, under cover of a letter dated 12 November 2007, and a written synopsis by way of closing submissions on 29 November 2007. She also made additional oral submissions both before and following the appeal interview with the Authority.

#### The appellant's case on appeal

[28] The appellant admits that he left Iran in early 2000 and not in mid-1999 as he had told the RSB for the purposes of his application for refugee status in 2000. He also admits that he did not tell the truth about the manner in which he left Iran in 2000; that he concealed the fact that he obtained an Iranian passport before leaving Iran; that he left Iran lawfully using that passport; and that he returned to Iran in 2004, again travelling on his passport.

[29] Notwithstanding those concessions, the appellant maintains the truth of the core account in respect of which he sought and obtained refugee status in 2000, and denies that his claim was procured by fraud. His explanation is set out below.

#### Lawful departure from Iran

[30] The appellant says that at the time he was being sought by the authorities in Iran, he was a young and naive teenager with little life experience, who had never before been out of Iran. He said that his family members were also inexperienced in respect of how to smuggle someone out of Iran. After he went into hiding, the appellant's uncle and his father decided that the safest way for the appellant to leave Iran would be by obtaining a valid Iranian passport and departing lawfully by air.

[31] To be issued with a passport, the appellant first had to obtain an exemption from compulsory military service. The appellant's family arranged for him to have an eye examination, as he had been troubled by defective eyesight since he was very young. After having the examination, the appellant was provided with his medical exemption card by the military.

[32] The appellant's uncle paid a substantial sum of money to a contact in the passport office, who arranged for the appellant's passport to be made available for the appellant's father to uplift. The same contact was able to confirm that the appellant's name was not on the airport blacklist. The appellant now believes that this is because he was not a person of sufficient importance to warrant being placed upon the list.

[33] The appellant then left Iran lawfully in March 2000, using his own passport. He stayed in Malaysia for approximately one month, while an agent made arrangements for his onward travel to New Zealand.

[34] The appellant says that he was not forthcoming about the mode of departure from Iran when he first came to New Zealand because he was advised not to refer to this by the agent engaged on his behalf in Malaysia. The agent told the appellant that if he admitted to the New Zealand immigration authorities that he had left Iran using his own passport, he would be turned around at the airport and sent back to Iran. The appellant was in fear for his safety and took the agent's advice at face value. He says that is why he lied about that aspect of his account.

#### Return to Iran in 2004

[35] The appellant also admits that he returned to Iran in 2004. He said that he first thought about doing so in 2002 after his father developed a significant heart condition. At that time, the appellant went as far as applying to the Iranian embassy in Wellington to have his New Zealand returning resident's visa endorsed

in his Iranian passport. He also arranged, through the Iranian embassy, for the notation which appeared in his Iranian passport with regard to his country of residence to be changed from Iran to New Zealand. However, after seeking advice from his father, the appellant decided that it was not yet safe for him to return to Iran.

[36] This may have been reinforced when he learned that his friend, F, who had been living incognito in the south of Iran, had been killed in a car accident. F's mother believed that the death was "suspicious", but the appellant did not know why she believed this.

[37] The appellant has always had poor eyesight. His condition continued to deteriorate after he came to New Zealand. Eventually, he obtained advice about the availability of a particular type of corrective surgery which is performed as a matter of routine in Iran. The same type of surgery was not widely available in New Zealand, and he was reluctant to undergo the procedure here. The appellant still knew virtually no-one in New Zealand and had no-one to look after him while he convalesced. He was afraid that if anything went wrong during the surgery, he could be left effectively blind and disabled, without any social or familial support.

[38] By 2004 the appellant was homesick, in need of eye surgery and anxious about his father's health problems. The combination of these factors was so strong that he decided to consider risking a return to Iran.

[39] The appellant's uncle again called upon the same contact who had provided assistance when the appellant left Iran in 2000. Armed with a further assurance through his uncle that his name was not on any blacklist at Tehran airport, the appellant decided to return to Iran by air.

[40] Once he arrived in Iran, the appellant stayed with his parents at their house. He said that his family took various precautions to maintain his confidentiality, such as fitting their motor vehicle with tinted windows to prevent anyone from seeing inside. He also avoided going outside apart from when he had eye surgery. The appellant was able to leave Iran without difficulty and returned to New Zealand two months later.

#### Witnesses



[41] Two witnesses gave evidence in support of the appellant. Their evidence was initially adduced by written statements which were subsequently appended as exhibits to sworn affidavits.

*Evidence of AB*

[42] AB is the owner of a business which employed the appellant for several years. He confirms that the appellant had expressed concerns about his father's health problems before he returned to Iran in 2004. He also recalls having conversations with the appellant about his unusual eye condition. The appellant had told AB that it would be difficult to have the right sort of operation in New Zealand. AB states in his affidavit that he believes that the appellant was frightened by the thought of going back to Iran but did not really know why. He did not know much about the appellant's background at that time.

*Evidence of OP*

[43] OP is an employee of AB, and was the appellant's supervisor at various businesses where he has worked in New Zealand.

[44] OP recalls the appellant telling him about his experiences of mistreatment in Iran and how he had left Iran in fear for his life. He also recalls a conversation which took place before the appellant went back to Iran in 2004, during which the appellant confessed that he was not confident that it was safe to return. At that point, the appellant still had not made up his mind about whether he would go back to Iran.

Material provided to the Authority

[45] The appellant also submitted the following material to the Authority:

- (a) a further written statement, dated 1 October 2007;
- (b) written statements signed by AB and OP. Those statements were reproduced to the Authority in the form of sworn affidavits on 29 November 2007 after counsel for the DOL indicated that neither witness would be required for cross-examination; and
- (c) medical documents relating to the appellant's eye condition and to his father's heart condition.

[46] Other documentary evidence appeared on the DOL file which was prepared for the hearing, and the appellant produced copies of his Iranian and New Zealand passports in compliance with a direction from the Authority.

[47] Counsel provided a memorandum dated 13 August 2007 and lodged final written submissions dated 28 November 2007. She also made additional oral submissions both before and following the appeal interview with the Authority.

### **STAGE ONE: WHETHER THE DECISION TO RECOGNISE THE APPELLANT AS A REFUGEE MAY HAVE BEEN PROCURED BY FRAUD, FORGERY, FALSE OR MISLEADING REPRESENTATION, OR CONCEALMENT OF RELEVANT INFORMATION**

#### Appellant's admissions

[48] The appellant has admitted that he made false or misleading representations as to the manner and timing of his departure from Iran. For the purposes of his application for refugee status, the appellant told the RSB that he left Iran overland in September 1999, and entered Turkey by using a false passport. The appellant now admits that this was untrue.

[49] When asked by the refugee status officer who considered his application for refugee status in 2000 whether he had ever been issued with an Iranian passport, the appellant claimed that he had not. The appellant now admits that this was also untrue. He admits that he concealed the fact that after going into hiding and before leaving Iran he obtained a valid Iranian passport, and that he had left Iran lawfully and without difficulty using that passport.

#### The RSB decision granting refugee status

[50] While it is not necessary to set out in full the decision of the RSB granting the appellant refugee status it is necessary to set out the following extract in order to place the Authority's findings in the appropriate context:

"Those who choose not to follow the 'official' state religion face a restricted and difficult existence:

'Although the Constitution states that "the investigation of individuals' beliefs is forbidden" and that "no one may be molested or taken to task simply for holding a certain belief," the adherents of religions not specifically protected under the Constitution do not enjoy freedom of activity. This situation most directly affects members of the Baha'i Faith.'

For those that follow the Baha'i faith, Iran is a hostile and dangerous environment in which to survive. Followers are harassed, arrested and often detained for their religious beliefs:

'The Baha'i Faith originated in Iran in the 1840s as a reformist movement within Shi'a Islam. Initially it attracted a wide following among Shi'a clergy. The political and religious authorities of that time joined to suppress the movement, and since then the hostility of the Shi'a clergy to the Baha'i Faith has remained intense. Baha'is are considered apostates because of their claim to a valid religious revelation subsequent to that of the Prophet Mohammed. The Baha'i Faith is defined by the Government as a political sect historically linked to the Shah's regime and, therefore, as counterrevolutionary, and characterised by its espionage activities for the benefit of foreign entities, particularly Israel.

Historically at risk in Iran, Baha'is often have suffered increased levels of persecution during times of political ferment.

Adherents of the Baha'i Faith continue to face arbitrary arrest and detention. The Government appears to adhere to a practice of keeping a small number of Baha'is in detention at any given time. According to the U.N. Special Representative and Baha'i groups, at least 12 Baha'is are in prisons, including 5 who were convicted of either apostasy or "actions against God" and sentenced to death. In March the four remaining detainees from the 1998 raid on the Baha'i Institute of Higher Learning were convicted and sentenced to prison terms ranging from 3 to 10 years (see Section 2.c).'

Through his close friendship with [F], [the appellant] has exposed himself as a supporter of one of the most tormented groups in Iran. He has actively shown his support for [F's family] and has spent a great deal of his time associating with this family. This association has caused him to come to the attention of the Iranian authorities. The authorities have stated to [the appellant] that they suspect him of converting to the Baha'i faith and that if he fails to co-operate with them they will conclude that he has already converted.

Conversion from Islam is a very serious offence in Iran. Citizens of Iran are not allowed to change their religious faith. The act of conversion from Islam, or apostasy, is prohibited under Islamic law and is punishable by death:

'An innate-apostate (one whose parents were Muslims and who embraced Islam but later left Islam), if a man, is to be executed. If a woman, she is to be imprisoned for life, but will be released if she repents. A national apostate (a person converting from another faith to Islam, and then reconverting back to the other faith) is to be encouraged to repent and, upon refusal to repent, is to be executed.'

The Iranian authorities are particularly vigilant when it comes to conversions to the Baha'i faith:

'The Government is highly suspicious of any proselytising of Muslims by non-Muslims and can be harsh in its response, in particular against Baha'is and evangelical Christians. The Government regards the Baha'i community, whose faith originally derives from a strand of Islam, as a "misguided" or "wayward" sect. The Government fuels anti-Baha'i and anti-Jewish sentiment in the country for political purposes.'

Recent country information indicates that the authorities in Iran have reacted swiftly and severely to apostasy when it involves an influence from the Baha'i faith:

'In January 1998, 21 Baha'is were held in prisons within Iran under various charges relating to their beliefs, 4 of whom faced the death penalty for Baha'i activities or apostasy. In July 1998 one of the detained Baha'is was

executed, accused of converting a woman from Islam to the Baha'i faith.”  
[Sic].

[Emphasis added]

Whether procured by fraud; false or misleading representation; concealment of relevant information.

[51] As already indicated “may have been” does not require the Authority to find that refugee status *was* procured by fraud, 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) [20]. In light of the appellant’s admissions the Authority is satisfied that the decision to recognise the appellant as a refugee may have been procured by fraud. For the sake of completeness, it may be added that the Authority is satisfied that the appellant’s refugee status was, in fact, procured by fraud.

[52] In summary, the refugee status officer took into account the fact that Baha’i were viewed with particular suspicion and hostility by the Iranian authorities; that the appellant’s association with a Baha’i had come to the attention of the authorities; that the authorities had accused him of converting to the Baha’i faith; that the authorities view any such conversion as a serious offence; and that they react “swiftly and severely” in such circumstances. These factors were considered in the context of the appellant’s claim that he had fled from Iran as soon as possible after his problem arose, with the Iranian authorities in pursuit.

[53] The refugee status officer therefore concluded that:

“[The appellant’s] close association with [F’s family], the attention he has received from the authorities in the past and the authorities’ continued interest in him after his departure all give rise to a real chance that the authorities would charge him with apostasy if he were to return to Iran today. The independent country information already discussed above clearly supports the argument that [the appellant’s] fear of being charged with, and executed for, apostasy is well-founded.”

[54] In that context, the Authority finds that it would clearly have been relevant to the refugee status officer’s deliberation and consideration of the appellant’s claim that, rather than leaving Iran with the authorities in pursuit, the appellant was able to hide for 10 months without detection.

[55] It would also have been relevant that, during that period of time, he was able to obtain a military service exemption by making a direct approach to the Iranian military authorities and undergoing a medical examination with government

doctors; that the results of the medical test conducted by the Iranian military were posted to him at the address at which he was hiding; that after being issued with a military exemption card by a government agency the appellant applied for and was issued with a passport by the Iranian government; and that he was able to use that passport to leave Iran lawfully through the airport in Tehran (his home city) without difficulty.

[56] Viewed in this light, the appellant's original claim that he was being pursued by Iranian authorities on suspicion of apostasy is implausible. The Authority also relies upon the following matters.

#### Inconsistent evidence

[57] The appellant gave various different explanations for the fact that by the time he left Iran some 10 months after supposedly going into hiding, the Iranian authorities still had not (supposedly) placed his name on the airport blacklist.

[58] First, counsel submitted that:

"There is no evidence placed by the Department of Labour as to show what individuals are considered to be a sufficient threat to Iran to cause them to be placed on the computers at the airports. There is no evidence from the Department of Labour concerning when the system of computers was up and running at the airport in Iran and the reliability of that system."

[59] However, this overlooks the account given by the appellant himself in connection with his application for refugee status. The appellant's evidence was that he and his family members were sufficiently concerned about the existence of such technology in 2000 that they paid an agent to find out whether the appellant's name appeared on the airport checklist.

[60] As an alternative explanation it was also submitted on the appellant's behalf (contradicting the submission outlined in para [58]) that:

"The appellant's evidence is that his father and uncle made certain through the contact known to his uncle that the appellant's name was not placed on that computer and this is the only reason that he was able to safely leave Iran".

[61] If, by that submission, counsel intends to suggest that the uncle's contact paid some kind of bribe to prevent the appellant's name being placed on the list on which it would otherwise have been placed, then it is an incorrect recitation of the appellant's evidence.

[62] The appellant's testimony before the Authority was simply that his uncle paid to discover whether the appellant's name had been placed on the computer. He did not claim that his uncle had paid anyone to prevent it from being so placed.

[63] The appellant also advanced a third explanation for the authorities' apparent lack of interest in him, notwithstanding his apostasy. He claimed that at the time he had left Iran in 2000 he was a person without any significant profile. In his statement dated 14 April 2007, prepared in advance of his cancellation interview with the RSB, the appellant stated that:

"My father asked my uncle to ask some people that he knew to check to see if my name was on the airport computers. It was not. My father felt that this was because I had been arrested only by the religious police and I was not a high profile political or religious opponent of the Iranian state. My father said that he thought I would be able to leave Iran on my own passport." [para 16]. [Emphasis added].

[64] During the course of the cancellation interview, the appellant then told the Authority that he did not know who was after him because they never introduced themselves to him, but he believed that it was probably the religious police, not government authorities.

[65] This third explanation is also rejected. It is a fundamental contradiction of the basis upon which he sought refugee status in 2000. While there are some indications on the RSB file that the appellant was not entirely sure of the identity of those who were pursuing him, the emphasis is clear that they were an important part of the state machinery.

[66] In his written statement dated 5 September 2000, the appellant referred to being detained by the "Disciplinary Forces". He claimed that he was detained, interrogated and mistreated by the "Intelligence Service" and asserted that it was the "Intelligence Service" which searched for his Baha'i friend and detained his friend's mother, and who then came to search the appellant's house.

[67] This was portrayed as the escalation of a campaign of harassment of the appellant which began in 1996 as a result of the appellant's cousin forming a relationship with F's sister; the murder of F's father in 1998; detention and interrogation of the appellant and F in 1999; and the raids carried out on F's home, and subsequently at the appellant's family home, in search of F and the appellant.

[68] In effect, the appellant is now saying that within a matter of only a few months after his father had told him that "he thought I would be able to leave Iran on my own passport", the appellant portrayed himself to the RSB as an imputed

apostate who had been forced to hide for several months and then leave Iran illegally to avoid being tortured and killed.

[69] The appellant's belated claim that he had been pursued only by some kind of "religious" police whose influence was insignificant is entirely out of keeping with the claim which he advanced in 2000. It is disingenuous and entirely self-serving.

#### The hiding of the passport

[70] In addition, the timing and manner of the appellant's departure from Iran was not considered in isolation by the refugee status officer who recognised the appellant as a refugee, but in the context of the appellant's account as a whole. The refugee status officer also took into account the appellant's claim that he would be returning to Iran without a valid passport and would therefore be subjected to close scrutiny by the authorities. She stated:

"[The appellant] does not believe he can return to Iran and live safely in another part of Iran as the authorities have power all over Iran and he would be arrested as soon as he arrived in the country. [The appellant] does not have a legal and valid Iranian travel document. It is likely in such circumstances that the authorities would perform a background check upon his arrival which would reveal that [the appellant] is wanted by the authorities."

[71] It is not simply that the refugee status officer would have assessed the level of risk to the appellant differently if she had known that the appellant had been able to leave Iran lawfully 10 months after his problems supposedly arose, and that he would be able to return to Iran using his own valid passport. What is significant is that, had she known of these matters, she would have evaluated quite differently the credibility of the appellant's claim to have been at risk at all.

#### Additional submissions for the appellant

[72] Counsel for the appellant submits that, during the appeal interview before the Authority, there was no challenge to the appellant's claim to have been persecuted and to have been at risk of being persecuted in Iran. However, the whole purpose of submitting, as the DOL does, that the appellant's refugee status may have been procured by fraud, is to call into question whether he was a person in need of the surrogate protection conferred by the Refugee Convention at the time he was recognised as a refugee in 2001.

[73] Counsel for the appellant referred to various decisions made by the Authority in cancellation proceedings. In one of those decisions, the Authority

found that the fact that an applicant was able to leave through the airport did not mean that his evidence was not credible; *Refugee Appeal No 75377* (31 March 2005). In other decisions, the Authority has accepted that it may be plausible that payment of a bribe could lead to an appellant's name being removed from a blacklist in Iran, or false details being entered into an Iranian passport.

[74] Counsel also submits that the mere fact that an appellant has returned to his country of origin after being granted refugee status does not mean that refugee status may have been procured by fraud; *Refugee Appeal No 76014* (30 May 2007), at [79].

[75] However, these cases simply demonstrate that each appeal will turn upon its own facts. In the circumstances of *this* appeal, the Authority findings are not predicated solely upon the fact that the appellant was able to leave Iran lawfully by air using his own passport, or upon the fact that he was able to return using his own passport. Further, it is significant that *this* appellant did not claim that a bribe was paid to prevent his name being placed on a blacklist, or to ensure that it was removed from such a list.

[76] The appellant also relies upon the testimony of AB and OP. They corroborate the appellant's claim that he had eye surgery when he returned to Iran in 2004, and that his father was unwell at the time. The DOL did not take issue with either proposition.

[77] AB and OP also indicated that the appellant had spoken of past mistreatment in Iran and that he appeared to be subjectively worried about returning there. Counsel for the appellant submits further that the appellant only returned to Iran in 2004 after taking precautions and as a result of his homesickness and the combined health problems of the appellant and his father. She also points out that he has not returned since 2004.

[78] However (and no criticism is offered in this regard), neither AB nor OP gave any evidence of the circumstances in which the appellant left Iran in 2000. At most, each says that they were aware of the appellant being concerned about returning. They knew nothing about why that was the case. Whatever subjective concerns the appellant had about returning to Iran (if any), they did not arise in the manner which he portrayed for the purposes of his claim for refugee status. The evidence of AB and OP is not sufficient to outweigh the admissions made by the appellant and the additional concerns identified above.



[79] The appellant claimed that he withheld the truth at the time of his original application because he was young and frightened, and because he was advised to do so by the agent who facilitated his arrival in New Zealand. While it is accepted that he was young and inexperienced, the Authority finds that the reason why the appellant made false statements and concealed the truth about his departure from Iran was because the core account which he gave for the purposes of his claim was untrue. The Authority finds that the appellant was not of interest to the Iranian authorities at the time he first left Iran to come to New Zealand in 2000 and finds that the appellant was able to return to Iran without difficulty in 2004 because there was no adverse interest in him on the part of the Iranian authorities.

[80] For completeness, in all the circumstances of this appeal, the Authority rejects the appellant's claim that his friend F died in suspicious circumstances after the appellant came to New Zealand. It was another convenient and self-serving claim in respect of which the appellant was unable to elaborate.

## **STAGE TWO: WHETHER THE APPELLANT SHOULD CEASE TO BE RECOGNISED AS A REFUGEE**

[81] Having found that the appellant's grant of refugee status may have been procured by fraud, the Authority moves to the second stage of the two-stage test.

### **THE ISSUES**

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

"...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[83] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

(b) If the answer is yes, is there a Convention reason for that persecution?

[84] The Authority has already found that when he left Iran in 2000, the appellant was not a person of interest to the Iranian authorities for the reasons he has always maintained. The appellant has not provided any other case for refugee status.

[85] Prior to his departure from Iran, the appellant was able to obtain a military service exemption by making a direct approach to the Iranian military authorities. He underwent a medical examination with government doctors. The results of the medical test were posted to him at the address at which he was living. After being issued with a military exemption card by a government agency, the appellant then applied for and was issued with a passport by the Iranian government. He was able to use that passport to leave Iran lawfully through the airport in Tehran, his home city, without difficulty.

[86] Two years later, the appellant applied to the Iranian embassy in New Zealand to renew his Iranian passport and to change the notation as to his place of residence to reflect his New Zealand domicile. There is no evidence that by doing so he created any problem for his family members in Iran, nor did it create any difficulty for the appellant when he returned to Iran in 2004.

[87] There is no evidence that the appellant's name has ever been placed on a black list. His name was not on the airport records in 2000, nor was it in 2004. Even if he genuinely held subjective concerns about returning to Iran as claimed in the affidavits sworn by AB and OP, the appellant was able to leave, enter and then leave Iran again without difficulty through the airport, using his own valid Iranian passport. There is no evidence to suggest that he would be apprehended by the Iranian authorities at the airport if he were to return to Iran today.

[88] Taking into account all of the appellant's circumstances, and considering their cumulative effect, the Authority finds that objectively, on the facts found, there is no real chance of the appellant being persecuted for a Convention reason if he were to return to Iran.

## **CONCLUSION**

[89] The following determinations are made:

- (a) The decision to recognise the appellant as a refugee may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.
  - (b) It is appropriate to cease to recognise the appellant as a refugee.
- [90] The appeal is therefore dismissed.

"A N Molloy"  
A N Molloy  
Member