

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76238

REFUGEE APPEAL NO 76239

AT AUCKLAND

<u>Before:</u>	M A Roche (Member)
<u>Counsel for the Appellants:</u>	C Curtis
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	9, 10 & 11 February 2009
<u>Date of Decision:</u>	20 April 2009

DECISION

INTRODUCTION

[1] These are appeals against decisions of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the appellants' second refugee status claims.

[2] The appellants are nationals of Iran who are husband and wife. They claim that since the determination of their first refugee claims, the wife's family in Iran has discovered photographs of her in immodest clothing and have also learnt the details of the appellants' first refugee claim by accessing the depersonalised versions of the first appeal decision on the Authority's website. The appellants claim that the wife's family considers that both these things, together with the appellants' marriage in defiance of their wishes, have brought dishonour on them and that the appellants are at risk of an "honour" crime at the hands of the wife's family. In addition, the wife has always objected to her treatment as a woman in Iran, including being forced to comply with the laws of *hijab* (Islamic dress rules for females). The change in 2005 from moderate to conservative political leadership

has resulted in rules concerning the treatment of women being more strictly enforced than at the time her previous appeal decision was published.

[3] The central issue to be determined in these appeals is whether the appellants' claims are credible and whether, as a result of events that have occurred since the determination of their previous claims, they face a real chance of being persecuted should they return to Iran.

[4] The appellants' second appeals were heard together as they are based on the same set of facts. Each appellant gave evidence in support of both their own and their spouse's appeals.

JURISDICTION RELATING TO SECOND OR SUBSEQUENT APPEALS

[5] The Authority's jurisdiction in relation to second or subsequent claims is set out in s129O(1) of the Immigration Act 1987 ("the Act"):

"A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[6] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act is determined by comparing the previous claim to refugee status against the subsequent one. This involves a comparison of claims as asserted by the refugee claimant. In the absence of significant difference in the grounds upon which the claims are based, there is no jurisdiction to consider the subsequent claim: *Refugee Appeal No 75139* (18 November 2004).

[7] Where jurisdiction is established, the merits of the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. Section 129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and the Authority has a discretion as to whether to rely on any such finding.

THE APPELLANTS' FIRST REFUGEE STATUS CLAIMS

[8] The appellants arrived in New Zealand on 25 April 2002 and applied for

refugee status at the airport. It is not proposed to set out in full the account presented by them in support of their first claims. A detailed summary of their account can be found in the decisions of this Authority in *Refugee Appeal No 73865* (10 December 2004) and *Refugee Appeal No 73866* (10 December 2004). Essentially, the husband claimed to have been involved in an adulterous relationship that was discovered by the Iranian authorities, leading him to flee Iran. The wife gave evidence supporting this claim and also claimed to have her own difficulties with the regime arising from the discovery of anti-regime poetry written by her.

[9] The RSB declined the appellants' first applications for refugee status on 30 May 2002. This led to their first appeals to the Authority. The Authority heard those appeals in October 2004 and issued decisions dismissing them on 10 December 2004. It rejected the claims of each of the appellants as completely lacking in credibility. The rejection of the wife's claims about her poetry was based on her failure to mention this aspect of her claim at the RSB and on the basis that her credibility was compromised by the false evidence she gave corroborating her husband's untrue claim.

THE APPELLANTS' SECOND CLAIMS FOR REFUGEE STATUS

[10] On 25 June 2007, the appellants filed their second claims for refugee status with the RSB. Because the grounds of the second claims are traversed in detail later, it is only necessary to give here a brief summary, sufficient to identify the claimed change in circumstances.

[11] The appellants claim that the wife is from a prominent religious family in City A. Her uncle, known as AA, is a powerful political figure in City A and a high-ranking *Ettela'at* official. The couple earned his enmity by marrying without his knowledge and despite the fact that there was a family understanding that the wife would marry her cousin, AA's son. AA took revenge against the husband by arranging for the *Basij* to harass him. Twice he was arrested and detained by the *Basij* for spurious reasons and was mistreated in detention. Fearing AA's attempts to punish them would escalate, the couple fled Iran. The wife had had her own problems in Iran, arising from her attitude to the regime and, in particular, the dress code for women and for her political poetry.

[12] In late 2006 or early 2007, the wife emailed photographs of her at the beach

in New Zealand to her mother. These were discovered by AA at a family gathering. The wife learnt from her mother that her uncle had been furious and had told others at the gathering that she was a source of shame to her family. In addition, her mother told her that her uncle was aware that the appellants had claimed refugee status in New Zealand and the basis of the claim (adultery by the husband). This was another matter in respect of which he considered the appellants had dishonoured the wife's family.

[13] The appellants fear that should they return to Iran, AA would arrange their murders or some other form of serious mistreatment. His political position gives him the power to do this as he controls the *Basij* at the mosque where he preaches and is linked through the *Ettela'at* to security networks throughout Iran. They would be unable to hide from him as the wife's name identifies her as a member of this prominent religious family. In addition, the wife feels unable to return to the legally prescribed subjugation of women in the Islamic Republic of Iran, particularly the requirement of covering. She has been harassed previously in the more moderate Khatami era. She fears that under the present regime, things will be even worse.

[14] The appellants were interviewed by the RSB in connection with their second claims on 9 October 2007. On 30 May 2008, the RSB published a combined decision, dismissing their second claims on the basis that there was no jurisdiction to consider them.

[15] The appellants have appealed against this decision.

ASSESSMENT OF JURISDICTION AND CONSIDERATION OF S129P(9)

[16] The Authority has jurisdiction to consider a second appeal from the appellants. Although aspects of their current claim predate the determination of their first appeal in December 2004, they claim that significant developments which place them at risk have occurred subsequently, in particular, the alleged discovery of the photographs and the refugee appeal decisions by the wife's uncle. The election of President Ahmadinejad and the associated crackdown on the enforcement of *Sharia* codes, including the *hijab*, has also occurred since December 2004. The Authority is satisfied that, in terms of s129O(1) of the Act, there are changed circumstances and the second claims are therefore brought on significantly different grounds.

S129P(9) – Whether the Authority will rely on previous credibility findings

[17] At the commencement of the hearing, counsel advised that the appellants did not intend to try to persuade the Authority not to rely on its previous credibility findings as to the husband's claim of adultery. They now concede that they provided false evidence at their first appeal hearing in this regard. She advised, however, that the wife maintained her claim concerning her activities as a poet in Iran and her claim to have had a dispute with a lecturer at university about women's rights. For reasons which follow later in this decision, these aspects of the wife's previous claim are accepted. The Authority accordingly relies on the findings of fact and credibility made by it in *Refugee Appeal No 73865* (10 December 2004) and *Refugee Appeal No 73866* (10 December 2004), except for the findings concerning the wife's poetry in Iran and the incident with the university lecturer.

THE APPELLANTS' CASE

[18] What follows is a summary of the evidence given by the husband, the wife and their witnesses at the second appeal hearing. An assessment of their evidence follows later in this decision.

Evidence of the wife

[19] The wife is aged in her early 30s.

[20] The wife is from a well-known religious family in City A in northern Iran. Her uncle, a man known publicly as AA, is a prominent religious figure there. In her family, religious rules and codes of conduct were strictly enforced. From the age of seven or eight, she was compelled to dress very modestly even when home with her family and was dressed more conservatively than other girls her age. From the age of seven, she was made to adopt *hijab* when outside of her home. At that age, her *hijab* consisted of a *manteau* (long dress) and scarf. From the age of 13, she was required to wear a *chador* at all times outside her house. Wearing the *chador* made her feel unreal, uncomfortable and unable to express herself in any way.

[21] From an early age, the wife felt oppressed by the lack of freedom in the Islamic regime and, in particular, the treatment of women. Because she was from a religious family, her first name was a traditional Arabic Muslim name. Early in

her teens, she adopted a modern Persian name and asked all her friends at school to refer to her only by that name. It was very difficult for the wife to overtly subvert the rules of the regime. Informally changing her name was one of the few gestures she was able to make to show her opposition.

[22] The wife attended university in City A where she studied architecture. She was forced to study theology as Islamic studies were a compulsory component of all university courses. On one occasion during a class, she commented about Islam's lack of progress in developing women's rights since the time of the prophet. Her lecturer asked her to leave the class and she was reported to the university's *Herasat* office where she was questioned about her views and made to sign a document concerning the insult she had made to Islam. She was thereafter banned from the theology class but able to sit the examination which she failed (although she knew all the answers to the questions because of her religious background). She had to repeat the paper the next semester.

[23] The appellant did not openly flout the Islamic dress code in public. However, from time to time she was with female friends who would be rebuked by "Islamic police" for being insufficiently covered. As a member of the groups, she was included in these rebukes and felt intimidated and harassed by them. On one occasion the appellant had a short hairstyle which made it difficult to keep her *chador* hood on properly. Her father responded by taking scissors and cutting the escaping hair on her head back to her scalp.

[24] The wife began writing poetry when she was about 12 or 13 years old. On one occasion while she was at university, she anonymously wrote a poem criticising the regime's lack of freedom on the blackboard of a classroom. She was able to do this unobserved and although the university investigated and tried to find out who had written the poem, the wife was never discovered to be the author.

[25] Before she left Iran, the wife gave or lent to one of her friends a book of poems she had written, some of which were critical of the regime. The book was discovered in a random bag search at the university and the friend was detained and questioned about the poems. The friend subsequently left Iran and the wife has since been unable to establish contact with her.

[26] From an early age there had been an understanding between the wife's parents and her uncle, AA, that she would marry his son, her cousin. The husband and wife grew up in the same neighbourhood in Iran and, when they

were at secondary school, they began a secret personal relationship. They discussed marriage in the future but were aware that this would be very difficult because of the wife's family. During the mid-1990s, the wife's sister was pressured by AA into divorcing her husband after he had a disagreement with him about political matters. The wife's sister was then pressured into an arranged marriage with a man who was already married and who mistreated her. She was allowed to return to live at her parents' home after the marriage failed, although her husband refused to set her free by divorcing her. The sister's problems made the wife anticipate that it would be very difficult for her to enter into a marriage that her uncle disagreed with.

[27] In early 2000, the appellants sought permission from the wife's parents for their marriage. They were refused. For the next year the wife made attempts to change their minds, culminating in a hunger strike which caused her to lose 10kg. Eventually her parents relented and allowed the marriage which was conducted discreetly in a registry office without any kind of public ceremony or celebration and without the knowledge of the wife's extended family.

[28] The wife's uncle had been outside Iran at the time of the marriage. In April 2001 he returned and was informed of the marriage. The next time the wife saw him he chastised her for the marriage and slapped her hard across the face, leaving her with a cracked and swollen lip. He threatened her that she would not "be allowed to drink a drop of happiness" from her marriage. He also insulted her husband and told her that he would not be permitted to be part of the family.

[29] AA then began a campaign of harassment against the husband. The husband operated a toy shop which had been successful. The *Basij* or *Hezbollah* began to make regular raids on the shop, harassing customers about their compliance with *hijab* and going through the stock looking for illegal items. On one occasion, the husband was handcuffed and taken away and detained for two nights after one of these raids. The wife learnt of this from his assistant who had seen him being taken away in handcuffs. The husband was taken to court and fined for selling uncensored children's cartoons. On another occasion, he was detained again and the shop was closed for 10 days.

[30] The wife found her relationship with her family increasingly uneasy. She was very close to her mother and brothers and wanted to see them, but her father was very influenced by AA and the wife's relationship with him became very difficult. The family pressure on the wife and the continuing harassment of the

husband led the appellants to decide that they simply could not stay in Iran. They wanted children but felt unable to have them in the face of AA's opposition to their marriage. The wife began to fear that she may, like her sister, be forced to separate from the husband. They did not think they would be able to solve their difficulties by relocating within Iran because AA's political connections and networks were such that wherever they went he would be able to find them and continue his harassment of them.

[31] In April 2002, the appellants departed Iran for Turkey. They left legally, using their own passports, but the husband paid a helper a bribe to smooth their exit because he feared that AA may have been able to manipulate the border control system and have them placed on a black list of people who are not allowed to leave Iran.

[32] The appellants flew to Istanbul. The wife had to wear a *chador* on the plane because it was an Iranian Airlines flight. She removed the *chador* at Istanbul airport and left it there. She then experienced being in a public place for the first time in her adult life without wearing a *chador* and felt that she could truly be herself for the first time. They met an agent in Istanbul who provided them with Israeli passports which they used to enter Germany. They gave their Iranian passports to the agent.

[33] In Germany, they were met by a second agent who advised them that they should not apply for refugee status there because it was very difficult to obtain. They told the agent in Germany that they had fled Iran because of the wife's family's opposition to their marriage. He told them that they would not be able to get refugee status on the basis of a family conflict. He advised them that if they instead claimed to be fleeing Iran because of the husband's adultery they would be considered to be refugees.

[34] The appellants arrived in New Zealand in April 2002. The interpreter at the airport recognised the wife's name and asked her whether she was a member of her uncle's family. The wife's other paternal uncle is a prominent Iranian diplomat and this was the uncle the interpreter had been referring to.

[35] In New Zealand, the wife was questioned by an Immigration New Zealand officer about her diplomat uncle. She thinks that this was because there may have been security concerns arising from her relationship to him in light of the events of 11 September 2001.

[36] Several months after arriving in New Zealand, the wife established telephone contact with her mother. She began emailing her niece and nephew in Iran after purchasing a computer in or around 2003. In around June or July 2006, her mother told her that her uncle, AA, had been at their house, arguing with the wife's father and telling him that the appellants had betrayed Iran and taken asylum in New Zealand and that they had brought shame on Iran. The wife believes that he had read the depersonalised version of their refugee appeals decisions published on the Authority's website and that he had recognised them from identifying details in the decisions.

[37] In the summer of 2006/2007, the appellants had a Japanese student living with them. He took photographs of the wife at the beach. The wife emailed about 20 of these to her nephew in Iran, who put them in a photograph album and gave them to the wife's mother. The wife wanted to show her mother what she looked like when she was free to be herself. She was wearing Western-style beach clothing in the photographs. Subsequently, at a family gathering, a child found the photograph album and brought it out to where the adults were gathered, including AA. The wife's mother telephoned her and told her that her uncle had stated in front of the others at the gathering that the wife looked like a prostitute, that she had ruined the family's reputation, and that the husband was responsible.

[38] In a subsequent telephone call, her mother warned her that if she returned to Iran her husband would force the appellants to divorce and that he had threatened to kill the husband. She advised the wife not to return to Iran.

[39] In October 2007, the wife's mother died. The wife learnt of her mother's death from her sister who telephoned her with the news. Her sister told her that the family blamed her for causing her mother's death and that she was disinherited. The wife has since tried to telephone her family but has been unable to get through. In July 2008, her 13 year-old niece secretly telephoned her and informed her that her father had died. The wife's two brothers have also died since she has been in New Zealand. She does not believe that she will now have any protection within her family from her uncle should she return to Iran. The wife stated that she would rather die than return to Iran and resume wearing the *chador*. She has continued to write poetry in New Zealand and has a website where she has published poems. She networks with other poets and has a relationship with a prominent Iranian/American poet, Esther Kamkar, whom she met when she travelled to New Zealand.

The husband's evidence

[40] The husband is aged in his late 30s. He grew up in the same neighbourhood in City A as the wife and knew her because he was friends with one of her brothers. The husband began a personal relationship with his wife when they were in their late teens. They conducted a relationship in secret for many years before marrying. This was because they did not have the financial resources to establish a household of their own and also because they anticipated difficulties because the wife was informally engaged to one of her cousins.

[41] Eventually, the husband's mother approached the wife's parents and asked, on the husband's behalf, for permission to marry the wife. The wife's parents refused this request. They were part of a prominent religious family and were wealthy. Apart from their problem with the wife's previous informal engagement, they did not think that the husband's family was "on their level".

[42] The wife then started a campaign against this decision and had many arguments with her parents. Eventually, they relented and allowed her to marry the husband. The marriage took place when the wife's uncle, AA, was outside Iran. AA had been a prominent figure in City A since the time of the Revolution. It was well known in City A that he had a high position in the *Ettela'at*. He also preached at a mosque and controlled the *Basij* there.

[43] AA learnt of the marriage after returning to Iran and was very angry. He slapped the wife at a family gathering. A few days later he came to the husband's shop, accompanied by three associates. He told the husband that he had no right to be married to his niece and that he would "deal with him". He slapped the husband in the face. After that first visit, a campaign of harassment against the husband began. Members of the *Basij* would regularly call into his shop checking for compliance with various laws. For example, they criticised him for not displaying a portrait of the spiritual leader. On one occasion the husband was arrested and detained for two days in connection with an English language cartoon that he stocked. He was eventually taken to court and fined. He was detained a second time in late 2001.

[44] The appellants decided that they could not withstand the harassment of the wife's uncle and that they would have to either leave Iran or separate. In April 2002, they left Iran for Turkey. The husband paid a bribe to a contact who knew people who worked at the airport to ensure that he and the wife would have no difficulty leaving. This contact also put him in touch with an agent who assisted

them to travel out of Turkey.

[45] The husband recalls that his wife wore a *chador* on the plane to Turkey but that she threw it away at Istanbul airport upon their arrival. His wife has always hated the *hijab* and Islamic ideology. The husband corroborated the wife's evidence that the agent in Germany persuaded them that the difficulties they had experienced were insufficient to support a claim for refugee status and persuaded them to give a false account. The husband regrets following this advice and believes that his failure to explain his true problems in Iran at first instance was a "big mistake".

[46] The husband corroborated the wife's evidence concerning her uncle's discovery of their refugee appeal decisions on the Internet and his discovery of the photograph album showing the wife wearing immodest clothing. He believes that the shame they have brought to the wife's family is such that the uncle will have them killed should they return to Iran. The husband believes that he would be able to have them murdered with impunity because of his position.

[47] Apart from the problems with his wife's family, the husband accepts that he could readjust to the lifestyle in Iran. However, he does not believe that his wife could cope again with the restrictions the Iranian regime places on women. She has told him that, in Iran, she can only be a real woman in private. She has now experienced being respected as a woman in public and having rights. In Iran, women have no rights and life there is very difficult there for someone like his wife.

[48] The husband stated that the wife has written poetry since her early youth and, when they started dating, she used to read her poems to him.

Evidence of BB

[49] BB is a taxi driver. He is a New Zealand resident and is from City A.

[50] He is familiar with both of the wife's paternal uncles (the diplomat and AA) as both men were well-known in City A. He stated that AA is a powerful religious and political figure in City A and that people are afraid of him. AA is based at a particular mosque and controls the local *Basij*. BB has seen members of the *Basij* who operate under AA throwing tomatoes at women who are insufficiently covered. He has also seen acid being thrown into the faces of insufficiently covered women.

[51] BB met the appellants in New Zealand after his wife found out that an Iranian couple from City A was in Auckland and did not know anyone here. BB and his wife visited them. When he found out the wife's name, he asked her if she was related to AA and she told him that he was his niece. BB and his wife no longer have much contact with the appellants. This is because BB's wife is quite religious and wears the *hijab*. In contrast, the wife does not wear the *hijab* and her manner of dress and general way of conducting herself makes BB's wife uncomfortable.

[52] BB stated that if the wife really is the niece of AA, she would be in a lot of trouble if she returned to Iran because he is a powerful man and is known to be vicious to his enemies. BB was involved with the *Mojahedin* in City A in the early days of the Revolution. He heard about an incident, soon after the Revolution, when AA and one of his associates executed a *Mojahedin* colleague by throwing him down a well.

Evidence of CC

[53] CC is a New Zealand citizen. He is from City A and grew up in the same neighbourhood as the appellants. He is a cousin of the husband and was a close friend of one of the wife's brothers. He left Iran in 2001 and was granted refugee status in New Zealand in 2003. He is now a student.

[54] When he was in his 20s, CC was aware that there was a personal relationship between the husband and wife but did not want to discuss this with anybody because of his friendship with the wife's brother. He recalls thinking that such a match would be difficult. This is because the wife's family is extremely religious while the husband's family is very educated and does not have a particular interest in religion.

[55] CC did not attend the appellants' marriage because it was conducted very quietly and privately. However, he recalls the husband telling him that one of the wife's uncles had found out about the marriage and was causing problems. He stated that the wife's uncle, AA, is well known in City A because of his strong link to a particular mosque which is the centre of extremism within City A. CC has never met AA or seen him up close although he has seen him in the distance. He stated that AA's *Basiji* forces from the mosque terrorised his neighbourhood and recalled one incident where almost 100 *Basiji* beat up people in the neighbourhood after an incident where an insult to the mosque had been perceived.

[56] CC recalls that in Iran, the wife hated being forced to adopt *hijab*. He recalls her once complaining and remarking to him that in summer temperatures of 40 degrees, women are “cooked” by their *chador*. In his statement, CC stated that the wife had confided in him that she would “commit suicide here in New Zealand rather than be returned to Iran”. When asked to explain this and other comments he made in his statement about the wife, he stated that he had known her for a long time and that she had a longstanding hatred of the oppression of women in Iran and, in particular, found it degrading to have to wear the *chador*. CC confirmed that the husband had told him of the problems he had experienced at the hands of the wife’s uncle. He learned of these problems in detail after meeting the husband again in New Zealand. He did not see the appellants much after their marriage because he himself was having the problems which caused him to leave Iran.

Evidence of DD

[57] DD was formerly a nurse. She is now self-employed and resides in Auckland.

[58] DD met the appellants in 2006. She formed a close friendship with them. DD visits the wife once or twice a week and she and her husband usually dine once a week at the appellants’ kebab shop. DD stated that it was she who suggested to the appellants that they file a second refugee claim based on their true circumstances when she became aware of their previous false claim, and aware of the basis for their fear of returning to Iran.

[59] DD has had many discussions with the wife about women’s rights in Iran and the *hijab*. In the course of these discussions, the wife has told her that she felt like a prisoner inside the *chador* she was forced to wear in City A. DD stated that, in three years, she has never seen the wife wearing any form of Muslim dress in New Zealand.

[60] DD recalled the wife being upset and telling her that her uncle had seen photographs of her at the beach and had stated that she was no better than a prostitute and should be punished.

[61] DD stated that, in early 2007, the appellants’ computer “crashed”. DD’s husband attempted to assist them with it because the appellants needed information from it to be able to complete their GST returns for their restaurant business. DD’s husband attempted to retrieve data from the hard drive of the

computer but nothing was retrievable.

[62] DD gave evidence that in late 2008, the husband telephoned her in a distressed state and told her that the wife's niece had secretly called her and informed her that her father had passed away. DD immediately went to the appellants' home and observed that the wife was distressed. DD subsequently arranged for the translation of the wife's father's death notice, which included AA in the list of relatives. DD was also informed by the appellants that AA had seen the depersonalised copy of their first refugee appeal decision which was published on the Authority's website on the Internet. She remembers that they were very upset about this. DD looked on the Authority's website for the decision and was easily able to identify which decision pertained to the appellants because sufficient identifying information such as the appellants' ages and the fact that the wife claimed to write poetry were all included in the depersonalised decision.

Documents received

[63] Counsel filed two sets of written submissions (opening and closing submissions). Items of country information were enclosed with the closing submissions. A number of documents were also filed including:

- (a) a death notice for the wife's father with translation. This notice named both her paternal uncles;
- (b) a photograph of the wife with Esther Kamkar, together with biographical information, photographs and poetry from Ms Kamkar's website; and
- (c) poetry written and published on the Internet by the wife.

THE ISSUES

[64] 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."

[65] 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?

[66] Because there are two appellants, each with a discrete claim, the framed issues must be addressed in respect of each appellant.

ASSESSMENT OF THE APPELLANTS' CASE

Credibility

[67] Prior to determining the framed issues, it is necessary to make an assessment of the appellants' credibility and the credibility of their witnesses. The husband and wife have previously made false refugee claims in New Zealand. Persons who have provided false evidence on previous claims face considerable hurdles in being accepted as credible by a subsequent panel of the Authority.

[68] Against this, both appellants gave evidence about the difficulties that they had experienced in Iran as a result of their marriage that was consistent with each other and highly consistent with the accounts they provided at their RSB interviews. Their Iranian witnesses both gave evidence corroborating the existence of a prominent religious and political figure in City A, known as AA. CC corroborated the appellants' evidence that AA is the wife's paternal uncle and that she is from a prominent religious family in City A, a member of which (her brother) he had known well. It is also noted that in their previous refugee claims both appellants provided as a peripheral detail the fact that the wife had an uncle who was influential and who had a high position in the *Ettela'at* in City A (see *Refugee Appeal 73866* at [10]).

[69] In the circumstances, the Authority accepts the appellants' accounts as to the reasons for their departure from Iran. That is, that the wife is from a prominent religious family as she claims and that the husband was subjected to an escalating campaign of harassment by her uncle AA and the *Basiji* he controlled. This harassment was aimed at ending the marriage between the husband and wife. It is accepted that AA is a highly influential figure in City A and that he has exhibited both considerable control over his extended family and vindictiveness towards the

husband.

[70] The Authority accepts the evidence of the wife regarding her treatment as a woman in Iran. It accepts her claim to have found being forced to wear a *chador* oppressive, degrading and, at times, extremely uncomfortable. It is accepted that the enforcement of *hijab* in the context of her highly religious family is stricter and more oppressive than for women in Iran generally. She was forced to wear a *chador* from an early age although, legally, she would have been permitted in public in the less restrictive *manteau* and scarf. It is also accepted that she came into conflict with a lecturer at university for expressing her views on women's rights. Although this aspect of her account was rejected by the previous panel, the current panel found her account of the incident detailed and plausible. It is not a matter that puts her at risk in Iran, rather it illustrates her long-held views about the treatment of women by Islam.

[71] The Authority has some doubt concerning the wife's claim to have sent her mother photographs of herself in beach clothes that subsequently came to the attention of other family members at a gathering. This doubt is raised by the wife's previous untruthfulness to a different panel of this Authority, and the "convenient" timing of the discovery of the photographs and the lack of proof in the form of email records that such photographs were ever taken or sent. The evidence of DD who said that the wife was upset after learning of the discovery of the photographs, is not overlooked. It would have been a simple matter, however, to arrange for DD to have "seen" the wife and be told of the reasons for her distressed state. Sincere though DD was, little weight is added by her evidence to what is, in essence, an account unsupported by independent, objective evidence – as is also the claim that AA has read the decision of the Authority on the first appeal. That a person in Iran would even think to look for a decision of the Authority, let alone know where to look, let alone be able to identify persons from a depersonalised decision and let alone be able to read it in English, defies the odds.

[72] Ultimately, for reasons which will become clear, it is not necessary to determine whether either claim (the photographs or the reading of the first appeal decision) is true and the Authority leaves them unresolved. Finally, the Authority accepts that the wife has had a lifelong practice of writing poetry. Her claim to write poetry was not accepted by the previous panel in the context of a rejection of her evidence in its entirety. There is ample evidence before the Authority that the wife is a practising poet. As will be seen, it is unnecessary to determine whether a

book of her poems was discovered in Iran after her departure and the Authority makes no finding on this matter.

On the facts as found, is there a real chance of either of the appellants being persecuted if returned to Iran?

[73] Having established the facts, the Authority turns next to the issue of whether either of the appellants face a real chance of being persecuted should they be returned to Iran. Both claim that the wife's uncle, AA, will seek to harm them because of the dishonour they have caused to him and the other members of the wife's family. In addition, the wife claims that, as a woman, she is subjected to oppression and discrimination in Iran which she should not be forced to tolerate. For her, an unbearable aspect of this oppression is the requirement that she be forced to adopt *hijab*, and in particular, the *chador* which she finds degrading and which symbolises for her the lack of freedom accorded to her as a woman in Iran.

[74] Because the husband and wife's claims are different, they will be assessed separately, starting with the wife and in particular her claim to fear gender-based persecution.

[75] A number of decisions of the Authority have considered the position of women in Iran. The leading decisions in this regard are *Refugee Appeal No 2039* (12 February 1996) and *Refugee Appeal No 71427* (16 August 2000).

[76] These decisions both featured extensive reviews of academic writing and country information on the position of women in Iran. Both note the depth of gender-based discrimination in Iranian society and the legal system. *Refugee Appeal No 71427* found at [75] that the state-legislated relegation of women to a substantially inferior status is in breach of fundamental human rights law which prohibits discrimination on the basis of gender and at [78] that, with regard to the appellant in that case, the policy and enforcement of gender-based discrimination against women is of a nature which permits a finding of persecution in the sense of a sustained or systemic violation of human rights.

[77] The position of women in Iran is described in a report from the International Federation of Iranian Refugees, *Human Rights Violations in Iran* (undated), as follows:

"Women in Iran encounter violence and discrimination at all levels. Violence against women is not only condoned but also perpetrated by the Islamic Republic of Iran, and is prevalent both in government institutions and domestic life. No safeguards exist to protect women in Iran.

The sexual apartheid that permeates social, cultural and political life in Iran constitutes a form of oppression and persecution that creates for the majority a second-class citizenry. Women's dress, work, socialising, familial and intimate relationships, reproduction and sexuality are all subject to control, either by male family members or the state. Women's autonomy, forms of cultural expression, and freedom of movement are severely circumscribed. Laws that criminalize adultery or fornication are disproportionately used against women and create an additional risk of persecution for women who are victims of sexual violence.

The regime's failure to prosecute offenders, both of sexual violence and of domestic abuse, denies women equality before the law and the effective protection of the state."

[78] More succinctly, Ann Elizabeth Mayer, in her book *Islam and Human Rights: Traditions and Politics* (3rd ed, 1999) states at page 112:

"The record ... overwhelmingly establishes that Islamic principles, Islamic law, and Islamic morality have been interpreted in Iran to justify depriving women of any semblance of equality with men, subjecting them to a wide range of discriminatory laws and treatment, and effectively confining them to serving their husbands, performing domestic tasks, and bearing and raising children."

[79] The wife complains about the oppression and lack of freedom accorded to women in Iran. She focuses her complaint in particular on the requirement that she be forced to wear *hijab* (in her experience, the *chador*) at all times in public in Iran since her early youth. She finds this to be degrading and dehumanising and sees it as a symbol of her oppression as a woman in Iran.

[80] It would be a mistake to view the wife's opposition to the *hijab* in terms only of freedom to choose one's attire. *Hijab* is a fundamental cornerstone of the Revolutionary regime in Iran and is seen by the leadership there as a symbol of the Revolution's success and authority. Its imposition after the 1979 Islamic Revolution was a reaction to the compulsory "unveiling" policy of Reza Shah in the 1930s. Between 1983 and 1996, the punishment for appearing in public without *hijab* was 74 lashes. In 1996, this was amended to imprisonment for between 10 days and two months and a fine: Ziba Mir-Hosseini "The Politics and Hermeneutics of *Hijab* in Iran: From Confinement to Choice" *Muslim World Journal of Human Rights* (2007) Vol. 4 Issue 1, p7.

[81] *Hijab* has continued to be a cornerstone and symbol of the Revolution. Clerics who have spoken against its compulsory nature have been prosecuted and sentenced to lengthy prison terms and, in one case, the death penalty (later commuted to seven years' imprisonment): *ibid* p8. Over time, the *chador*, which has been promoted by the establishment as "the best *hijab*" has become associated with fanaticism and state ideology. From the mid 1990s, "*bad-hijabi*" or incorrect *hijab* became more widespread. *Bad-hijabi* has been described as the "deliberately improper wearing of the veil, symbolising its wearer's desire for

freedom of choice and resistance to the regime”: *ibid* p8.

[82] The demise of the reform movement in 2004 has led to increasing focus on the *hijab* on both sides of the political spectrum. Adopting “*bad-hijabi*” is one of the few means by which women can express opposition to the regime, especially given the widespread disillusionment with the electoral process following the failure of the reformist movement associated with the presidency of Ayatollah Khatami between 1997 and 2005: R Barlow and S Akbarzadeh “Prospects for Feminism in the Islamic Republic of Iran”, *Human Rights Quarterly* (2008) Vol 30 pp21-40.

[83] The response to the increasing challenge to the oppression of women in Iran through the adoption of *bad-hijabi* has been an unprecedented and aggressive crackdown by police to enforce the rule of *hijab* in public spaces. This crackdown, which was instigated in April 2007, was hailed by conservatives as evidence of the Ahmadinejad government’s revival of the slogans and ideals of the Revolution: “The Politics and Hermeneutics of *Hijab*: From Confinement to Choice” *supra*, p13. Estimates of the numbers of women arrested as a result of this crackdown vary. The United States Department of State records that, according to a domestic report, 20,000 were arrested for *bad-hijabi* during 2007 while more than half a million received warnings: United States Department of State *Country Reports on Human Rights Practices: Iran* (11 March 2008) in Iran. The United Kingdom Home Office states that during 2007 and 2008, more than two million were either stopped or detained by morality police although, reportedly, police used force less frequently after a picture of a girl’s face covered in blood after a beating by police for *bad-hijabi* was widely circulated: United Kingdom Home Office *Country Report Iran* (17 March 2009).

[84] In addition to police enforcement of *hijab*, there are widespread reports of vigilante violence against women in *bad-hijabi*. These are noted in both the Department of State and Home Office reports referred to above.

[85] The more stringent enforcement of *hijab* is not the only measure to reinforce the oppression of women in Iran in the current political climate. There has been a concurrent crackdown on women’s rights activists. In 2008, dozens of women involved in the promotion of women’s rights were subjected to arbitrary detention, travel bans and harassment. In September 2008, prison and lashing sentences were upheld against two feminists for participation in a 2006 demonstration demanding equal rights. Another four women were sentenced to six month jail

terms for writing articles on a feminist website: Human Rights Watch *Country Summary Iran* (January 2009).

[86] It is noted that the RSB dismissed this aspect of the wife's claim, referring to the findings of the Removal Review Authority (RRA) decision made on 30 June 2006 in respect of the wife. It was found in that decision that her personal circumstances were not exceptional, that discrimination in Iran did not amount to exceptional circumstances in terms of s47 of the Immigration Act 1987 and that not all women in Iran are refugees. The RSB noted that the RRA findings were not binding but that it was reasonable to pay them regard.

[87] There is no requirement under the Refugee Convention that a claimant's circumstances be exceptional. The lack of exceptionality in the wife's circumstances is of no relevance to the question of whether or not she is a refugee. The assertion that not all women in Iran are refugees is undoubtedly correct. However, again, this assertion is of no relevance to the question of whether or not the wife is a refugee. No doubt many women in Iran support the regime and do not take issue with the restrictions imposed on their gender by Sharia law. Every case will turn on its own facts.

[88] The wife considers that to live as a woman in Iran would involve her daily degradation by a regime which imposes its control upon her in public through the *hijab* and which curtails her rights and freedoms by reason of her gender. She is a member of a religious family with a high profile and, as such, had the requirements of *hijab* imposed on her more strictly than many others. Following the death of her father and brothers, she has no protection within her extended family from her uncle who may continue to attempt to control her life and enforce extremely strict Islamic codes of dress and behaviour against her and may continue his attempts to enforce her separation from her husband, as he did with her sister. The treatment she fears as a woman in Iran can properly be characterised as being persecuted as it will have the effect of impairing or nullifying her enjoyment and exercise of core human rights. These rights include her right to equality before the law and the equal protection of the law. Any flouting of the Islamic dress code she detests is likely to result in humiliating, degrading and violent treatment.

[89] Taking her particular circumstances into account, which include her family profile, the control over her that her uncle has attempted to exert, her long held opposition to the restrictions on the freedom of women imposed by law in Iran and her vehement opposition to the *hijab and chador*, her fear of being persecuted in

Iran is well-founded. Given this conclusion, it is unnecessary to make findings with respect to her claims about the photographs or the exposure of her previous refugee claim. It is also unnecessary to consider her claim in relation to her poetry.

[90] The Authority now turns to the question of whether the husband has a well-founded fear of being persecuted in Iran. Given the finding that the wife has a well-founded fear of being persecuted there, it seems likely that should the husband return, he will not be accompanied by his wife.

[91] The husband fears harm at the hands of his wife's uncle or his agents because of the dishonour the appellants have caused to him and the other members of the wife's family.

[92] The existence of AA in City A and his relationship to the wife has been accepted. On the evidence of all four Iranian witnesses, he operates from a mosque in City A which is a centre of extremism and he directs the activities of *Basiji* thugs who intimidate the neighbourhoods surrounding the mosque. His activities appear to be confined to City A. The husband no longer has any family members remaining in City A. There appears to be no reason why he would return there. It is more likely that, if returned to Iran, he would base himself in Tehran, where his mother and sisters, with whom he enjoys a good relationship, now reside. City A is distant from Tehran.

[93] It is speculative to suggest that AA would attempt to harass or harm the husband wherever he went in Iran or that he would somehow be alerted to the fact of the husband's return by immigration officials. The husband, by his own admission, is not the subject of any official interest in Iran. There appears to be no reason why his return to Iran would be anything but routine.

[94] Even if the husband did return to City A, it would appear the AA's motivation to harass him may have significantly diminished as his harassment was intended to achieve the removal of the husband from the wife's family. Furthermore, any such harassment would be a matter of personal vendetta and would not appear to be a matter covered by the Refugee convention.

[95] As to the claim concerning the exposure of the husband's refugee claim, there is no country information before us indicating that a person's status as a failed asylum seeker results in a risk of them being harmed on return to Iran by reason of that status alone. It is clear from the decision that the husband's claim

to be an adulterer was entirely fabricated. In the Authority's experience, there is an acceptance by the Iranian authorities that bogus refugee claims are routinely made by Iranian nationals in order to gain residence in western countries. In many of the "cancellation" cases we have determined, the fact that a person holds refugee status is not an impediment to them being issued a passport and travelling in and out of Iran in the normal way: see, for example, *Refugee Appeal No 75652* (30 October 2006).

[96] The appellants have claimed that should either of them apply for passports to facilitate their return to Iran, their names will be recognised and the wife's family will be alerted to their intended return. This claim is speculative. The Authority finds that the risk that the husband would sustain mistreatment amounting to being persecuted at the hands of AA or others does not rise to the level of a real chance.

[97] The husband has not suggested that there is any other reason why he would be persecuted should he return to Iran apart, from his difficulties with AA. He frankly conceded that he would be able to readjust to life in Iran and, apart from his problem with his wife's family, would have no particular difficulties there. He contrasted himself with his wife whom he considered unable to cope with the discrimination and restrictions placed on her in Iran by reason of her gender.

Convention reason

[98] Having found that the wife has a well-founded fear of being persecuted in Iran, it is necessary to consider the second framed issue which is whether there is a Convention reason for her persecution.

[99] The Authority has previously determined that gender can be the defining characteristic of a social group and that, given the pervasive discrimination and mistreatment of women in Iran because of their gender, "women" may be a particular social group in Iran: *Refugee Appeal No 71427* at [106]. The reason why the wife is at risk of being persecuted in Iran is because of her status as a woman. The relevant Convention ground is particular social group.

[100] Having concluded that the husband does not have a well-founded fear of being persecuted in Iran, it is unnecessary to determine the Convention reason issue in respect of him.

CONCLUSION

[101] The Authority finds that the wife is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted to her. Her appeal is allowed. The husband is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. His appeal is dismissed.

"M A Roche"
M A Roche
Member