

**AT AUCKLAND**

<b>Appellant:</b>	<b>AP (Iran)</b>
<b>Before:</b>	B L Burson ( Member)
<b>Counsel for the Appellant:</b>	D Mansouri-Rad
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	8 & 9 September 2010
<b>Date of Decision:</b>	29 September 2011

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**DECISION**

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**INTRODUCTION**

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining to grant refugee status and/or protected person status to the appellant, a citizen of Iran.

[2] The appellant's claim is based on a multiplicity of grounds. He claims to be wanted by the authorities for assisting a demonstrator to escape the authorities during a post-election protest and that his history of problems with the authorities for infractions of the dress code and other regulations on social behaviour will serve to increase the harm he faces. He further claims that since being in New Zealand he has converted to Christianity and is at risk of being persecuted as a result. Lastly, he claims to have a conscientious objection to performing military service in Iran. Issues of both credibility and whether he has a well founded fear arise.

[3] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

## THE APPELLANT'S CASE

[4] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[5] The appellant was born in the late 1980s in X into a family of relative wealth. His family were open-minded and not overtly or particularly devout Muslims. His father did not fast and did not insist that the female family members strictly obey laws regarding the *hijab*.

[6] The appellant told the Tribunal that ever since he was a small child he questioned his parents, relatives, and teachers about Islam without finding satisfactory answers. He recalls a specific occasion at his primary school when he asked his religious studies teacher if there were any contradictory passages in the Koran. His teacher told him this could not be the case. The appellant set about inspecting the Koran and quickly found passages which appeared contradictory. When he pointed this out to the teacher his teacher admonished him and told him not to return to the class.

[7] The appellant's problems with the school authorities and law enforcement agencies over his appearance began when he was aged 12 or 13. The appellant wore jewellery, T-shirts and generally dressed himself in a manner which was deemed unacceptable by the authorities charged with enforcing dress code regulations. He had a habit of wearing a large cross around his neck and earrings with crosses on them. Although these were worn as fashion statements and not symbols of religious identity, this habit earned him the nickname "the Christian" amongst his friends.

[8] Throughout his teenage years, the appellant suffered multiple short-term detentions at the hands of the local *Basij* or law enforcement officers because of his appearance and clothing when in public places. There was no set pattern. Some weeks he would be arrested only once, other weeks he would be arrested two or three times per week. Only very occasionally did a week pass by when he was not arrested or detained. Typically, the appellant was taken to a nearby van and given "guidance" on how he should wear his hair and dress. Such "guidance" sessions typically involved verbal abuse and being slapped.

[9] On some occasions, the appellant was taken to the local police station where he was fingerprinted, photographed and questioned about his clothing and/or appearance. Such detentions at the police station lasted for a few hours

during which time he was typically made to stand in a corner of a room with his hands handcuffed behind his back. He was verbally abused and questioned about his choice of clothing. If the appellant refused to answer, or gave a 'wrong' answer, he was slapped.

[10] Depending on the mood of the officer concerned, the matter could be resolved at the police station in which case the appellant's father was called and lectured by the officers about his son. Sometimes the appellant's father had to pay money to the officers. On other occasions the appellant's father arranged for respected persons whom he knew to go to the police station and mediate. On some occasions, however, the officer concerned referred the appellant to the Youth Court. There he received fines but on one occasion the appellant was sentenced to eighty lashes. However he paid a sum of money so that only two lashes were administered.

[11] On other occasions, the appellant had problems for socialising with girls. Approximately four or five years ago, he got into a verbal altercation with a *Basij* who harassed him for walking with his girlfriend. During this incident the *Basij* stabbed the appellant in the chest with a broken bottle. Luckily, this caused only a superficial wound and did not require hospital treatment.

[12] At around the same time, the appellant, his girlfriend, and another male friend were arrested by a *Basij* while driving in the appellant's car. The appellant's car was searched and the *Basij* found a water pistol in the shape of a replica gun which was used to squirt water at girls. They were taken to the local police station. The appellant and his friend were separated from his girlfriend and kept in a cold dark cell for a number of hours before being interrogated separately. The appellant was interrogated about his girlfriend being present in the car and the replica gun. During this interrogation, the appellant was made to squat with his chin resting on a table for approximately one and a half hours during which he was hit by an officer with a rifle butt.

[13] As a result of all of these incidents, the appellant attained a negative profile with the local *Basij* and law enforcement officers. On one occasion he was simply sitting, minding his own business, when a local *Basij* officer walked past him and "accidentally" stabbed him with a flick-knife in an unprovoked assault. This caused a minor wound to his forearm. On another occasion the appellant was injured with a knife by a law enforcement officer during a *mêlée* which ensued when the police tried to shut down the annual Chaharshandeh Souri celebration in his area.

[14] He believes this negative profile explains the excessive trouble at his 21st birthday party. Girls were present and alcohol was served. The party was raided by the authorities, the appellant, some relatives who were present, and all the guests were arrested and detained. Usually these detentions are only for a short period but the appellant and his relatives were held for three days and had to pay a more substantial fine than the norm.

[15] These various problems with the authorities placed him under great mental pressure, so much so that during his teenage years the appellant began cutting himself on his forearms and arms on a regular basis. His parents took him to see a psychologist but he did not find it helpful. As far as he was concerned the psychologist only wanted his parents' money.

[16] These problems also made him question Islam even more. He became curious about Christianity. The appellant made clear to his parents that he was not satisfied with Islam but they did not take his position seriously because he was at that time still a teenager. When aged around 14 or 15, the appellant tried on several occasions to attend an Armenian Christian church. On each occasion he went the church was closed. He spoke to passers-by who informed him that he would not be allowed into the church because it was only for people who were Armenian Christians. On one other occasion, an acquaintance from the neighbourhood gave him a Bible to look at. The appellant did not have any discussions with this person about Christianity and suspects it was given to him simply because he was known as "the Christian".

[17] The appellant and his friends took part in the demonstrations which followed the disputed presidential election in 2009. At one election protest in December 2009 the appellant was in a large group of demonstrators when he noticed *Basij* officers dragging a young woman to the ground and beating her. The appellant raised the alarm and rushed towards the *Basij* officers and helped her escape the *Basij* who, at that point, were substantially outnumbered by the large number of protestors in the area. The appellant recognised one of the *Basij* officers as being attached to the mosque in his area. The appellant ran into the crowd and made his way to the family home.

[18] Three or four days later, the appellant was at home when the authorities surrounded the family home. The appellant escaped via the roof to a nearby neighbour's house where he telephoned a friend who lived in a different part of X. His friend came to his neighbour's house after a few hours. He told his friend what

had transpired and, after donning a *chador*, the appellant left with his friend in his car. The appellant lived with his friend for approximately two months. During this period he met up with his friends at a mall they used to frequent. They informed him that the authorities had been approaching them at their local park and asking them if they knew the appellant. He returned to his friend's house and never ventured to areas where he was known while he remained in Iran

[19] The appellant ascertained from his parents that there had been a number of visits to the family home by the authorities looking for him. The appellant decided it was not safe for him to remain in Iran and with the assistance of his father found an agent who obtained for him a photo-substituted Iranian passport in a different name. Using this passport the appellant departed Iran towards the end of 2009. He arrived in New Zealand in early 2010.

[20] The appellant explained that about two and a half months after coming to New Zealand he began privately praying to a Christian God. He realised he needed faith in his life but was unsure where or how to go about deepening his understanding of the Christian faith. Approximately five or six months after his arrival the appellant met AA and asked him to obtain a Farsi Bible and to recommend a church for him to attend.

[21] He began attending a church with AA at that time and has been attending Sunday services and Bible study classes there regularly ever since. Apart from AA's church, he has also attended another church attended by persons he resided with for a number of months. He has also located a Catholic church in the centre of Auckland where he attends on his own to pray. He finds particular spiritual comfort in this church because it affords him privacy.

[22] The appellant told the Tribunal that as a result of his experiences in New Zealand and attendance at the church his faith had significantly deepened. He has become a Christian and was baptised in early 2011. He told his parents that he had converted and been baptised. Their reaction was negative to begin with. His mother has since accepted his decision but his father remains angry with him.

[23] The appellant is determined to share and promote the Christian faith in Iran. To this end, he has established a Facebook group called "ABC". On this page the appellant posts Christian pictures, writes articles describing the differences between Islam and Christianity, and encourages Iranians to convert. On this group he is identified by name as the Chair of the group. There is also a link to his personal Facebook page which has all his details. Currently the group has

approximately 5,000 members. He explained that the group administrators, comprising himself and two other people, have no way of checking the background of people who apply to join the group. Their policy, consistent with their message of freedom, is to allow all people wishing to become members to join but they delete or block persons who then become abusive.

[24] The appellant explained that through the website he has entered into a number of discussions with persons in Iran wishing to explore Christianity. This is done via another internet chat room facility. As a result of his conversations two people in Iran have now converted to Christianity

[25] The appellant told the Tribunal that he sees this Facebook page as a means by which to bring about not only changes in individual religious belief but also to foster wider change within Iranian society. The group is called "ABC" to reflect the strongly held belief that Iranian people are denied the freedom to choose in almost every aspect of their lives. He explained that life in Iran is full of boundaries. The freedom to choose one's religion is non-existent in Iran, just as there is no freedom to choose one's clothes or what one purchases. The appellant sees this Facebook group as the best way to promote change. He encourages people in the group to print and disseminate the material to others and in this way propagate the message.

[26] The appellant explained it would be very difficult to carry on this activity safely in Iran. The *Ettela'at* and security apparatus have a cyber unit which is aimed at hunting out sites of this nature. The appellant has no doubt that if he were to attempt to carry out such activity in Iran there is a risk he would be identified, arrested and detained.

[27] Since being in New Zealand, the appellant has been in regular contact with his family. He understands from them that shortly after his departure there were visits to the family home on one or two occasions by the authorities but since that time they have stopped.

[28] The appellant told the Tribunal that he became liable for conscription after withdrawing from his university. He told the Tribunal that he does not wish to perform military service in any guise for the Iranian regime. He does not believe he would have any choice as to which branch of the armed services he would be conscripted into. In any event it would not matter. Even working in the kitchen of the regular army would mean a regime which he has no desire to serve. For him serving in the military as a conscript would be tantamount to a sin because it

would be part of a system which tortures and kills people. He would refuse to attend.

### **Evidence of AA**

[29] The Tribunal heard from AA who first met the appellant in April 2010. The appellant has been living with AA since early 2011. AA explained that, when the appellant first approached him, he was wearing a sweater with a cross and had a large cross hanging around his neck and earrings with crosses. The appellant asked to speak to him in private and they went to a nearby cafe. At this meeting, the appellant disclosed to AA that he had left Iran because he had a non-conformist background which had seen him get into much trouble with the authorities for dress code violations including wearing a cross. He told AA that he did not like Islam because of its strict rules and preferred Christianity because of its more tolerant outlook. The appellant asked AA if he could recommend a church and obtain a Bible for him.

[30] AA invited the appellant to attend his church and the appellant began doing so. He has since that time regularly attended the church's Sunday service and bible study sessions. The appellant has also attended courses on Christianity for new converts. AA is also aware that the appellant has attended the church attended by persons he arranged for the appellant to live for some months in 2010. He understands from these persons that the appellant attended this church on a regular basis up to four times per week and he undertook that church's training course for new converts.

[31] AA stated that he believes the appellant to have become a committed Christian believer. He has undergone a baptism and shown great enthusiasm and progress in his Christian faith. He has observed in the appellant a deep commitment to the Christian faith and that he has now embraced Christianity to a degree where he can be involved in the effective sharing of faith in life with others.

[32] In recent months, the appellant has indicated to AA that he has a call to evangelise to Muslims in Iran. AA attributes this in part to the appellant's non-conformist personality. AA told the Tribunal that approximately two months ago he noticed the appellant working on his computer in his room at the house and was shown a Facebook group that the appellant had established called "ABC". This is aimed at spreading the Christian gospel to Iranians back in Iran and the appellant has successfully converted at least one person as far as AA can recall.

## **Documents and submissions**

[33] On 6 September 2011, the Tribunal received from counsel written submissions in support of the appeal. Attached to these submissions were:

- (a) Copy of medical report dated 23 August 2011 from Dr William Daniels as to the scarring on the appellant's arms and torso. In this report Dr Daniels confirms that some scarring is consistent with both self-harm by the appellant and other scars are consistent with knife and/or glass wounds as he had indicated;
- (b) Report dated 16 August 2011 from the appellant's doctor's surgery outlining the appellant's clinical notes at the practice. In this document the appellant's doctor notes the appellant presenting with multiple superficial scars on his arm and chest which he indicated were self-inflicted but other scars where he was injured by the *Basij*.

[34] During the hearing, counsel served on the Tribunal copies of photographs of the appellant taken in Iran showing him dressed in a variety of "western" clothes with differing western hairstyles. In one of the photographs the appellant is visibly wearing a large cross.

[35] On 21 September 2011, the Tribunal received further written submission from counsel concerning the monitoring by the Iranian security apparatus of opposition activities carried out over the internet. Attached to these submissions were copies of F Fassihi "Iranian Crackdown Goes Global" *Wall Street Journal* (4 December 2009) and Associated Press "Iran suspected in high-end hack attack" *New Zealand Herald* (6 September 2011).

## **Credibility**

[36] Except for the one aspect of his account the Tribunal finds that the appellant is a credible witness.

[37] His evidence in respect of the dress code and other violations of social regulations and punishment he received was consistent. It is supported by photographs which show him clearly dressed and his appearance being of a "western" nature. He has multiple lacerations on his arms. Dr Daniels, a former police forensic pathologist, confirms the scarring is consistent with the appellant's evidence as to the origin and nature of his wounds. His account of inflicting self-



harm and of being stabbed by *Basij* in the circumstances he claimed is therefore accepted as credible.

[38] However, the appellant's evidence in relation to the 2009 incident was implausible. The appellant could not adequately explain why, if he thought he had been positively identified by the *Basij* attached to his local mosque, he risked returning to his home and thereafter remaining there for a number of days. Nor could the appellant adequately explain why he risked attending the very mall where he had been arrested on a number of occasions. The appellant's explanations for this were glib. While the Tribunal accepts the appellant may have attended the 2009 demonstration, for these reasons, the Tribunal finds that his claim to be wanted by the authorities for helping the demonstrator escape the *Basij* is an embellishment.

[39] Despite this embellishment, the Tribunal accepts that the appellant has become a Christian. His file is notable for the fact that when asked to state his religion in his confirmation of claim form the appellant put "non religious but interested in Christianity". His evidence before the RSB and the Tribunal has been consistent with a person who has been undergoing a process of spiritual change since he arrived in New Zealand.

[40] The Tribunal also accepts that the appellant established the Facebook group page as an expression of his long-standing non-conformist attitude and his conversion to Christianity. The Tribunal is satisfied that the appellant's actions have not been undertaken simply to bolster or manufacture a false refugee claim. His evidence to the Tribunal, corroborated by AA's evidence, clearly and compellingly establishes that the appellant sees the evangelism he undertakes not just in narrow religious terms but as a mechanism for bringing about wider political change in Iran.

#### *Findings of fact*

[41] The Tribunal finds that the appellant has been arrested and detained on multiple occasions by various agents of the Iranian state for dress code infractions and for breaching other social regulations. As a result, the appellant has been detained on multiple occasions for up to five or six hours at a time during which he has been questioned as to his lifestyle choices. He has been slapped and verbally abused regularly during these detentions and, on one occasion, was made to stand in a stress position for an extended period of time and hit with a rifle butt.

He has been referred to the Youth Court where fines have been imposed. On one occasion he was sentenced by the court to be lashed eighty times but paid money and was lashed only twice.

[42] The appellant has, since coming to New Zealand, converted to Christianity. Partly as an expression of his new faith, and partly as an expression of a desire to bring about wider political change in Iran, he has established a Facebook page upon which both anti-regime and pro-Christian material and comments are posted. He has encouraged two persons in Iran to convert to Christianity through this page and through conversations in an on-line chat room.

[43] It is on this basis that the Tribunal will assess the appeal.

### **The Refugee Convention**

[44] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[45] 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.”

[46] In terms of *Refugee Appeal No 70074* (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?
- (a) If the answer is yes, is there a Convention reason for that persecution?

### **Assessment of the Claim to Refugee Status**

[47] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 2039/93* (12 February 1996). Put another way, persecution can be seen as the infliction of serious harm,

coupled with the failure of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[48] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective.

*Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Iran?*

[49] The Tribunal has found that the appellant left Iran on a false passport. As such, he is required to make application for an Iranian passport if he is to be returned. Country information establishes that he does not have an automatic right to be issued with one but rather must complete a form relating to an investigation of his illegal exit, see: Austrian Centre for Country of Origin and Asylum Research and documentation (ACCORD) report *Iran: 1) Information on the current procedure for issuance of Iranian passports; 2) Information on last changes of the procedure for issuance of Iranian passports; information on possible updates of the procedure in the period between or previous to 2004-2005; 3) a) Provided that there was an update: Information on time requirements for replacing an old with a new passport; b) provided that there was no update: Information on time requirements for issuance of a biometric passport*, a-7369 (6 September 2010). Even if he were to be issued with a passport as opposed to a one-way emergency travel document, his illegal exit would increase the probability that he would be interviewed upon arrival in Iran about his mode of departure.

[50] Mr Mansouri-Rad submits the Iranian authorities are well aware of the degree to which the appellant’s generation use Facebook and other social networking media to organise and are likely to interrogate young people about their Facebook activities. All that would need to happen would be for the interviewing officer at the airport to log on to Facebook and enter the appellant’s name. This would bring up not only his own personal Facebook page, but also the “ABC” page. At this point the appellant would be in very serious trouble as the content of the group page would become known.

[51] Although the appellant has lodged his claim on multiple bases, in the end, it is not necessary for the Tribunal to reach a final decision on all of them as it accepts Mr Mansouri-Rad's analysis. The increased awareness and sensitivity of and use by Iran's security and intelligence apparatus over use of Facebook and other internet-based social media, reflected in the country information filed by counsel has been commented on by the Refugee Status Appeals Authority (RSAA) in a number of cases. In *Refugee Appeal No 76454* (8 March 2010), the RSAA considered the *Wall Street Journal* article submitted in this case and other country information. It noted at [59]:

"[59] Country information establishes that the Iranian security and intelligence services, including those personnel working at the airports, are increasingly sensitised to the role new media can play as an intelligence gathering tool or as a mechanism to stifle dissent. In particular, in late 2009, a 12-person cybercrime unit was established to review websites with a view to the prosecution of persons "spreading lies" and "insults" against the Islamic system – see R Tait "Iran moves to silence opposition with internet crime unit" *The Guardian* (15 November 2009). During the 22 Bahman demonstrations, the authorities have used SMS text messages to ask people to inform on protests by texting '113' to a designated number – see Iran protests: live Blog *The Guardian* (11 February 2010). Furthermore, the WSJ article reports of person being required to declare if they have a Facebook account and, if so, log onto it and of *Sepah* agents creating false Facebook identities to infiltrate protest groups."

As to airport officials checking if returnees have Facebook accounts, the RSAA noted at [54]:

"[54] The WSJ article involved interviews with 90 Iranians "living abroad" some of whom had been back to Iran following election-related activity abroad. The article records that:

'Dozens of individuals in the U.S. and Europe who criticized Iran on Facebook or Twitter said their relatives back in Iran were questioned or temporarily detained because of their postings. About three dozen individuals interviewed said that, when travelling this summer back to Iran, they were questioned about whether they hold a foreign passport, whether they possess Facebook accounts and why they were visiting Iran. The questioning, they said, took place at passport control upon their arrival at Tehran's Imam Khomeini International Airport. Five interviewees who travelled to Iran in recent months said they were forced by police at Tehran's airport to log in to their Facebook accounts. Several reported having their passports confiscated because of harsh criticism they had posted online about the way the Iranian government had handled its controversial elections earlier this year.'

[52] No further country information has been submitted to or obtained by the Tribunal in this case as to the exact nature and scope of monitoring, which remains opaque. Nevertheless, the United States Department of State *Human Rights Report 2010: Iran* (8 April 2011) (the 2010 DOS report) observes, at section 1f, that the Iranian authorities monitored telephone and internet communications. It also notes their sensitivity to the use of Facebook as a mechanism for posting comments critical of the regime.

[53] There can be little doubt that Iran continues to have a poor human rights record. The introduction to the 2010 DOS report summarises the position:

“The government severely limited citizens' right to peacefully change their government through free and fair elections, and it continued a campaign of postelection violence and intimidation. The government committed extrajudicial killings and executed persons for criminal convictions as juveniles and through unfair trials, sometimes in group executions. Security forces under the government's control committed acts of politically motivated violence and repression, including torture, beatings, and rape. The government administered severe officially sanctioned punishments, including amputation and flogging. Vigilante groups with ties to the government, such as Basij militia, also committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals, often holding them incommunicado. Authorities held political prisoners and continued to crack down on women's rights activists, ethnic minority rights activists, student activists, and religious minorities. There was little judicial independence and few fair public trials. The government severely restricted the right to privacy and civil liberties including freedoms of speech and the press, assembly, association, and movement; it placed severe restrictions on freedom of religion. Authorities denied admission to or expelled hundreds of university students and professors whose views were deemed unacceptable by the regime. Official corruption and a lack of government transparency persisted. Violence and legal and societal discrimination against women, children, ethnic and religious minorities, and lesbian, gay, bisexual, and transgender persons were extant. Trafficking in persons and incitement to anti-Semitism remained problems. The government severely restricted workers' rights and arrested numerous union leaders. Child labour remained a serious problem.”

[54] Should he be interrogated at the airport, the appellant's non-conformist background would be quickly revealed. This would create a negative perception of him. In all the circumstances of this appeal the Tribunal finds that there is a real chance that the Iranian authorities will search Facebook. The appellant's Facebook group page identifies the appellant by name and lists him as the chairperson of the group. The content of the group page is avowedly anti-regime. The Tribunal was shown a number of passages written by the appellant which are highly critical of the Iranian regime. One compares the regime to Satan. Another makes fun of the notion that economic policy could be guided by the hidden *imam* whose existence is a core belief of the Shi'a Islamic faith. There was repeated Christian imagery posted by the appellant and others on the website. Others have posted the emblem of the former Pahlavi regime as well as pictures of former President Khatami.

[55] Once the content of this Facebook page is known, the appellant could expect harsh punishment amounting to his being persecuted. For the above reasons, the Tribunal answers the first principal issue in the affirmative. The appellant has a well-founded fear of being persecuted in Iran.

*Is there a Convention reason for the persecution?*

[56] The appellant's predicament is plainly contributed to by his religion and by his political opinions. The Tribunal is satisfied that the establishment and operation by the appellant of his Facebook group page is driven not simply by matters of religion but by a political element in which the appellant sees freedom to choose religion as a mechanism to encourage people to demand wider freedoms in Iran. The second principal issue is also answered in the affirmative.

### **Conclusion on Refugee Status**

[57] For the above reasons, the Tribunal is satisfied that the appellant's predicament falls within the definition of a refugee set out in Article 1A(2) of the Refugee Convention.

*Whether the appellant is excluded*

[58] The Tribunal notes that on 5 April 2011 the appellant was sentenced, by the District Court, to a period of five months Community Detention in respect of convictions under the Crimes Act 1961 for three offences arising from the same domestic incident. The Tribunal further notes that, as these offences were committed in New Zealand, they are not capable in law of falling within the scope of Article 1F(b) of the Refugee Convention which provides for exclusion from refugee status of persons in respect of whom there are serious reasons for considering they have committed a serious non-political crime outside the country of refuge prior to entry there.

### **The Claim under the Convention Against Torture**

*The Issues*

[59] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

[60] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

"... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third

person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

### *Assessment of the claim under Convention Against Torture*

[61] Because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Iran. The recognition of the appellant as a refugee means that he cannot be deported from New Zealand to Iran – see Article 33 of the Refugee Convention and sections 129(2) and 164 of the Act – the exception to section 129 which is set out in section 164(3) of the Act does not apply. Therefore, there are no substantial grounds for believing the appellant would be in danger of being subjected to torture in Iran.

### **The Claim under the ICCPR**

#### *The Issues*

[62] Section 131(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.”

[63] Pursuant to section 131(6) of the Act “cruel treatment” means cruel, inhuman or degrading treatment or punishment but, by virtue of section 131(5):

- “(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:
- (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.”

### *Assessment of the claim under the ICCPR*

[64] Again, because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Iran. For the reasons already given in relation to the claim under section 130 of the Act, there is no prospect of the appellant being deported from this country. Therefore, there are no substantial grounds for believing that the appellant is in danger of being

subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in Iran. Accordingly, the appellant is not a person who requires recognition as a protected person under the ICCPR.

## CONCLUSION

[65] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[66] The appeal is allowed.

"B. L. Burson"

B L Burson  
Member

Certified to be the Research  
Copy released for publication.

B L Burson  
Member