

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76344

AT AUCKLAND

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| <u>Before:</u> | B L Burson (Member) |
| <u>Counsel for the Appellant:</u> | D Mansouri-Rad |
| <u>Appearing for the Department of Labour:</u> | No Appearance |
| <u>Dates of Hearing:</u> | 15 & 16 June 2009 |
| <u>Date of Decision:</u> | 24 July 2009 |

DECISION

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

INTRODUCTION

[2] The appellant was born in 1991. He arrived unaccompanied in New Zealand in December 2008, shortly before his 17th birthday. Section 141B of the Immigration Act 1987 ("the Act") requires that in relation to a claim by a minor to be recognised as a refugee, or any appeal by a minor under the Act, a responsible adult must be nominated to represent the minor's interests. Not having any adult in New Zealand who could assume this responsibility for him, a social worker attached to the Children, Young Persons and their Families Service (CYFS) was assigned to represent the appellant's interests. The CYFS officer was present throughout the hearing of the appeal.

[3] What follows is an outline of the evidence the appellant gave in support of his appeal. An assessment follows thereafter.

THE APPELLANT'S CASE

[4] The appellant is the only child of his parents. He has lived all his life in the same city. His father worked as a taxi driver and his mother has her own business. The appellant grew up in a non-religious environment. While nominally Muslims, his mother and father observed no religious practice whatsoever. They always told the appellant that he was free to choose his own relationship with God and did not force any particular point of view upon him as to any particular religion, Islam included.

[5] The appellant's early life was uneventful for the purposes of his appeal. His difficulties began in 2006 when he enrolled in a state high school in his area. While at the time of his enrolment there was no dress code required for male students, soon after he started the principal declared that all male students had to wear suit-style trousers and jackets. The appellant did not like to do so.

[6] Religious education classes were compulsory at this school. Due to his upbringing, the appellant asked his religious education teacher questions about Islam. The appellant told the Authority that one question he had related to the status of *imams* and prophets. The religious education teacher was telling the class about how *imams* were special kinds of people. The appellant replied that they were surely men like anybody else, albeit people who possessed superior knowledge and he asked why they were considered special. The teacher called the appellant an unbeliever and expelled him from the class. The appellant told the Authority that he had had similar questions in his mind while growing up but, when he was at primary and intermediate school, he lacked the confidence to ask the questions. Maturing, he found he gained the necessary confidence. This particular teacher however, typically did not answer the appellant's questions and on numerous occasions expelled him from the class for persisting in asking questions.

[7] On these occasions, the appellant was taken before the school vice principal who admonished him. The appellant insisted that he was simply asking questions and argued with the vice principal. In the end, the appellant's father was called to the school. The appellant's father's position was that the religious education teacher was there to answer the appellant's questions and the teacher had no right to expel him from the class for simply asking a question. Some three to four months after enrolling, the appellant was expelled from the school.

[8] The appellant then went to a private school which had no uniform requirement or compulsory religious education classes. After a few months, this school relocated to an area far away from the appellant's neighbourhood and he went to his third high school. This third high school was situated near to his home and he knew the religious education instructor. Although the religious education classes were compulsory, as he knew this teacher personally, he agreed to the teacher's request not to make inflammatory comments or ask such questions in the class. The appellant did not complete high school as he was forced to flee and came to New Zealand in his final year.

[9] Also in 2006, at about the same time as the appellant began having trouble with the religious authorities at his first high school, he also began having trouble with the *Basij* and members of *Noure-e-Entezami*, (the law enforcement forces) which are responsible for ensuring compliance with the state-imposed dress and social codes. Young men were expected to wear a certain style of clothes, namely dress trousers and shirts with collars. They were not to be seen in the company of girls. The appellant did not like to wear these clothes and considered that he should be free to wear whatever he chose. This brought him into conflict on a routine basis with these authorities. From the age of about 15 or 16, the appellant was stopped every two to three days for some reason.

[10] There was no set pattern to these incidents. On many occasions, the appellant was stopped and detained for no more than five minutes and questioned about why he was wearing a certain style of clothes, wore his hair in a certain way, or was talking to girls. Invariably, on each occasion the *Basij* or *Entezami* members involved slapped the appellant.

[11] On many other occasions, typically in a public place such as a mall where there were many people about, the appellant was arrested and taken back to the local police station and detained for up to five hours. The frequency with which this happened varied. He could be taken back to the police station on three consecutive occasions and then not again for a further three or four months. The treatment he suffered when he was taken back to the police station was typically worse than what happened when he was detained for a few minutes in the street. When taken to the police station, he was placed in a cell whereupon he was beaten about his face and body with punches and was also kicked. Sometimes he was hit with a metal rod or baton. He was verbally abused. After being detained for a few hours, the appellant was always then made to sign a written undertaking

not to talk badly to the *Basij* or *Entezami* members and to comply with their requirements.

[12] The appellant recalls a particular incident in which he was detained for a few hours. This took place during a festival known as *Char-Shanbeh Suri* which is a traditional Iranian festival. Each year, a celebration takes place in streets in many neighbourhoods throughout Iran including in the street where the appellant's house is located. The appellant explained that the authorities did not like the people to celebrate this festival and deployed large numbers of police and anti-riot personnel to suppress it. In previous years, the riot police had turned up and dispersed the assembled crowd in the appellant's street, beating some of the males who had been taking part but the appellant had always managed to run away from the anti-riot police.

[13] In 2008 a similar thing happened but, whereas in previous years the anti-riot forces had only assaulted the males, on this occasion they began assaulting the females as well. The appellant, along with a number of other males from the neighbourhood, went to intervene. The appellant was beaten by the anti-riot police, arrested, placed in a van and taken back to the local police station along with 20 or so other persons from the neighbourhood. There, he was beaten further. The appellant's father, who had been watching the celebrations with other neighbours from the balcony of their apartment, came to the police station with the appellant's birth certificate and identity card. Eventually the appellant was released.

[14] The event which precipitated the appellant's ultimate flight from Iran took place in late 2008. The appellant explained that, although schools in Iran were segregated, they nevertheless finished at the same time. This meant that young boys and girls were on the street at the same time. It was, therefore, common for local police stations and *Basij* offices to deploy personnel in substantial numbers at this time to make sure that the male and female students were not walking together or engaging in conversation.

[15] On this particular day, the appellant was walking home after school when he met a male friend called AA. They began walking back towards their respective homes when a car occupied by two *Basij* members pulled up. One of the *Basij* got out of the car and approached them. He accused the appellant and AA of hassling girls who were walking in their vicinity and, as usual, he began swearing at them. As the appellant began to protest his innocence one of the *Basij* slapped him hard

across the face without warning. Although the appellant was outraged by this, he said and did nothing.

[16] The *Basij* then demanded to search their respective bags and they complied. While the *Basij* found nothing in the appellant's bag, they found some prohibited DVDs of Hollywood movies in AA's bag. The *Basij* began questioning them both about the DVDs. The appellant replied that they were nothing to do with him, but the *Basij* would not listen. An argument ensued which became heated. One of the *Basij* members then took out some handcuffs and moved towards the appellant, making a move to place handcuffs on him and arrest him. Incensed by this further example of harsh treatment, he pushed the *Basij* member. The *Basij* member stumbled, fell over and hit his head on the curb.

[17] The second *Basij* member then got out of the car and came towards the appellant and AA. Scared by what had happened, they ran away. As the appellant was running down the street, he looked behind him and saw that two further *Basij* members had appeared on the scene on a motorbike and had begun to chase them down the street on the motorbike. After a short distance, the appellant and AA split up and the appellant ran into a park. The *Basij* members on the motorbike also separated, with one running on foot after AA, and the other chasing the appellant on the motorbike. The appellant ran into a park, the entrance of which was blocked with bollards, which meant that the motorbike could not enter. The appellant managed to escape the *Basij* by running out of another entrance on the other side of the park. From there he got into a taxi and travelled to a shop owned by a friend called BB which was situated nearby.

[18] After some 15 minutes, another of the appellant's friends from the neighbourhood arrived at the shop to inform BB of AA's arrest. Upon hearing this, the appellant became worried and BB agreed to take him to his grandmother's house which was situated some distance away. Once the appellant arrived at his grandmother's house, he rang his father and told him what had happened. His father told him to wait there. A short while later, the appellant's father came to the grandmother's house and it was agreed that the appellant would stay there while the appellant's father ascertained what was to happen.

[19] Some five or six days later, the authorities came to the appellant's house looking for the appellant. His father was arrested and taken away to a local police station and detained for two days. He was questioned as to the appellant's whereabouts. He was freed only upon the appellant's grandfather submitting the

deeds to the grandfather's house as surety.

[20] The appellant learned of his father's arrest from BB who lived next to the appellant's house. BB telephoned the appellant at his grandmother's house. The appellant discussed the situation with his grandfather and it was agreed that he should go to the bus station, take a bus to another city and stay with one of his uncles (the son of this grandfather). The appellant travelled to this uncle's house where he remained hiding for the next month.

[21] During this time, he kept in semi-regular contact with his parents. He did not speak directly to them but rather had messages sent to him via his uncle. While he was staying with this uncle, he learned that there had been a further visit to the family home by the authorities. On this occasion the house was searched and some documents, such as his birth certificate and identity card, were taken. Around this time, the authorities also closed down his mother's shop under the pretext of finding "immoral" material there. She is now unemployed.

[22] He learned from his uncle that his father had approached an agent who had agreed to secure the appellant a passport and a ticket out of Iran. The passport and airline tickets were sent by post to the uncle's house. The uncle drove the appellant to Tehran on the day of his departure. The appellant was greeted at the airport by some of his close friends, including BB and AA. They said his father had told them that on this particular day, the appellant was to leave. At the airport, AA apologised for divulging his name but said that he had managed to last five or so days before being forced to do so. Although AA indicated he had been beaten in detention, he refused to give any further details.

[23] The appellant was nervous when he left the airport but he did not encounter any difficulties. He travelled from Tehran to Thailand where he was met by an acquaintance of the agent. This person then gave him a false passport and he used this to travel to New Zealand.

[24] Since he has been in New Zealand, the appellant has kept in contact with both his parents and his close friends. He does not talk on the telephone to his parents but communicates via email and Internet chat rooms. He has learned from his father that the *Basij* member whom he pushed over was hospitalised for some time in a coma, but has now recovered.

[25] He has further learned that AA was summoned to court on a number of

occasions after his departure in relation to possessing illegal DVDs. As far as the appellant is aware, this matter has now been dealt with and AA does not have any further problems with the authorities. He has learned from his other friends that AA has been badly affected by his treatment in detention. He understands from AA that during his court hearings, AA was informed that his co-offender, the appellant, had been charged with a number of offences, namely:

- (a) assaulting the *Basij*;
- (b) possessing and distributing illegal DVDs;
- (c) being '*arazel-o-ibash*' (meaning a thug and a hooligan); and
- (d) harassment of women.

Consequently, he fears he will be arrested if returned to Iran.

[26] Also, the appellant becomes liable to perform his military service at the end of 2009 the year when he turns 18, but has no wish whatsoever to do so.

[27] He does not wish to serve in any branch of the Iranian armed forces. He has no desire to be part of an institution which is obliged to defend a regime which denies the Iranian people their freedom and has caused both him and his parents anguish. Asked to explain what affect the repeated detentions and beatings had on him, the appellant spoke of feeling that his "dignity is being crushed" causing him to become angrier towards the regime. He felt he was losing more and more of his dignity by his repeated harassment and beatings which made him depressed. He said it also had an affect on his parents who were caused great stress and anxiety by his detentions and beatings. Yet regardless of whatever branch of the armed forces he would be required to serve in, he would have, as a primary duty, an obligation to defend this same regime. He told the Authority that he did not consider the Iranian regime to be run by 'true' Iranians. If they were, they would not suppress Iranian festivals.

[28] The appellant explained that at the moment there is a lot of tension in Iran following the election victory claimed by President Ahmadinejad. As has happened in previous years, the regime has manipulated the election system and ensured that only their candidates were elected. People are, however, tired of this and many thousands of people are taking to the streets. Despite this, it is the government which all conscripted soldiers are required to defend. The army and

law enforcement forces are being used to suppress the genuine wish of the population and the appellant would not want to serve in the armed forces to be used against his own people.

[29] However, if someone invaded Iran, the appellant explained he would have no compunction about serving in the army. Even if the invasion was to secure the downfall of Ahmadinejad, the appellant would fight because the cost of having a foreign power remove even an illegitimate government is too great. If this is to happen, it must happen by the will and actions of the Iranian people and not from the outside.

Statement of the appellant's father

[30] On 16 June 2009, the Authority received a statement from the appellant's father and a certified translation thereof. In this document, the appellant's father confirms that in late October 2008, the appellant had a "scuffle" with a *Basij* member which resulted in the *Basij* member having a brain haemorrhage and remaining in a coma for several months. The appellant's father states that he had been informed that the officer is recovering and that this incident took place over a few CDs and DVDs.

[31] The appellant's father confirmed that he (the father) had been arrested a few days later and that the appellant's mother's shop is now closed down. The appellant's father further confirmed that the authorities had gone to the house on several occasions in order to arrest the appellant and that they had kept their house under close observation because they did not believe that he had no news of his son.

[32] The appellant's father also confirmed that the appellant had had a number of problems with the authorities at school and on the street because of the way he dressed and that events in Iran had caused them to fear for him going into military service. The father confirmed that the appellant had been arrested during the celebration in the street.

Submissions and documents

[33] On 12 June 2009, the Authority received from Mr Mansouri-Rad a memorandum of submissions. On 15 June 2009, the Authority received copies of the appellant's birth certificate and national identity card, together with certified

translations thereof.

[34] At the conclusion of the hearing, Mr Mansouri-Rad addressed the Authority orally. He submitted that there are a number of bases to the appellant's claim.

[35] First, that he faces a lengthy term of imprisonment in respect of the incident with the *Basij*. He said that this is properly categorised as persecution and not prosecution because the *Basij*, strictly speaking, had no lawful power to arrest the appellant. The *Basij* are an unpaid voluntary paramilitary group who enforce the laws surrounding dress and social codes as they see fit. They work in close collaboration with the police and law enforcement forces, regularly exceed their strict authority and routinely arrest, detain and beat people. Against this background, the appellant's defence of himself against the purported arrest by the *Basij* member and subsequent initiation of court proceedings against him should not be considered prosecution, but rather persecution.

[36] Second, the appellant has been charged with possessing DVDs and harassment of women, even though there was no factual foundation for these charges. This evidences the persecutory element to his predicament.

[37] Third, Mr Mansouri-Rad submitted that the charge of being a 'thug and a hooligan' is routinely used by the authorities to deal with people whom they deem to be "anti-social". Whilst in the worst cases people are executed for being described as such, in the appellant's case it was likely that he would receive a lengthy term of imprisonment without a fair trial.

[38] Mr Mansouri-Rad submitted that the appellant also has a genuine belief in not performing his military service. There is a real chance that he could be conscripted into the law enforcement forces because the system is computerised. It is submitted that because they commit human rights abuses, the appellant cannot be forced to serve in the armed forces where there is a real chance that he could be conscripted into the law enforcement forces. Even if he were to be assigned a non-frontline role, his activities would still support the actions of the regime, which he hates, and the actions of the officers with which he does not agree.

[39] Finally, Mr Mansouri-Rad submitted that the appellant's personality is such that at some point, he will get into further trouble with the regime, which could result in his being persecuted.

THE ISSUES

[40] 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."

[41] 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?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[42] The Authority accepts the appellant is a credible witness. The account which he gave was consistent with what he said previously and, in the context of Iran, plausible. Such concerns as did arise, particularly in relation to whether the appellant had claimed in his RSB interview that DVDs were found in his bag by the *Basij*, were satisfactorily resolved.

[43] The appellant presented as a thoughtful and intelligent young man with highly developed political views about the regime in Iran. He was demonstrably up to date with contemporary political events. The Authority has no doubt that the appellant's desire not to serve in the regime represents his deeply held beliefs.

[44] The Authority has some minor concerns about one aspect of his account, namely, why the appellant's father would inform his friends of his intended date of departure. However, after careful reflection, the Authority cannot say with any confidence that this is implausible, much less give its concern such weight as to outweigh the otherwise generally credible account that he gave on every other

aspect of his claim. To the extent necessary, the appellant is afforded the benefit of the doubt on this point in accordance with the usual principle in this jurisdiction.

[45] For these reasons, the appellant's account is accepted in its entirety.

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

[46] In order to contextualise the appellant's claim for protection, it is necessary to have regard to three matters:

- (a) the nature and function of the *Basij*;
- (b) the recent post-election violence in Iran; and
- (c) the prevalence of torture and other forms of ill-treatment of detainees in Iran.

The nature and function of the *Basij*

[47] The Authority's jurisprudence on Iran often refers to the *Basij* and notes its position as a powerful paramilitary organisation within Iran – see, for example, *Refugee Appeal No 75358* (23 June 2005) at [31]-[32] and *Refugee Appeal No 75205* (23 September 2004) at [47]. There is, however, little analysis of its function and significance in maintaining the domestic political hegemony of conservative factions within the clerical establishment and their interpretation of *velayat-e-faqih* (rule of the supreme jurist) as the fundamental organising principle of the post-Shah Iranian state. Some greater understanding of this is necessary to properly contextualise the appellant's predicament.

[48] The *Sazman-e Moghavemat-e Basij* (National Resistance Mobilisation) (*Basij*) was formed by order of Ayatollah Khomeini in November 1979 after the United States Embassy hostage siege. Originally named *Sazman Basij Melli* (National Mobilisation Organisation), Ayatollah Khomeini appealed for a "20 million man militia" to defend the newly formed Islamic Republic of Iran against not only foreign aggression but also internal enemies. In its early years, the stability of the Islamic Republic was challenged by uprisings of ethnic Kurds, Turkomans and Balochis. These ethno-conflicts occurred alongside the disintegration of the coalition between Khomeini's Islamist supporters, secular nationalists and left-wing opposition groups who had united with widespread popular support to overthrow

the Shah. The *Basij*, along with the Islamic Revolutionary Guard Corps (*Sepah Pasdaran*) (IRGC), formed part of a new institutional structure designed to ensure the hegemony of Khomeini's Islamist faction over its temporary and ideologically divergent allies. The onset of the Iran/Iraq war in 1980 cemented the place of the *Basij* as one of the central pillars of the security apparatus of the newly Islamised state. That said, caution must be exercised in seeing the *Basij* in monolithic terms. While in urban centres the *Basij* are more likely to take a prominent role in quashing civil unrest, in the more rural areas the *Basij* typically engage in public relief works – see generally, D Hiro, *Iran Under the Ayatollahs* (Routledge and Keegan Paul, London, 1995); D Macdowall *A Modern History of the Kurds* (I B Tauris, London 1996) at 269; Byman *et al Iran's Security policy in the Post-Revolutionary Era* (Rand National Research Institute, Rand Corporation, Santa Monica, CA, 2001) http://www.rand.org/pubs/monograph_reports/MR1320/; Wehrey *et al The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corps* (Rand National Research Institute, Rand Corporation, Santa Monica, CA 2009) <http://www.rand.org/pubs/monographs/MG821/>; Jane's Intelligence Review *Mass Mobilisation – The Rise of Iran's Paramilitary Enforcer* (12 June 2008) (“the Jane's report”); Cordsman *Iran's Revolutionary Guards, the Alquds Force, and other Intelligence and Paramilitary Forces* (Centre for Strategic and International Studies, Washington DC, 17 August 2007) at p10.

[49] It is clear that the *Basij's* importance to the survival of the Iranian regime has increased over the years. Since its earliest days, domestic politics in the Islamic Republic have been shaped by tensions between rival factions within the clerical establishment operating within a political structure with competing power centres – see International Crisis Group *Iran: Ahmadi-Nejad's Tumultuous Presidency* (6 February 2007) at pp 2-6. These tensions had by the mid-1990s become manifested in conflict between the “pro-reformist” President Ayatollah Khatami and his many supporters among Iran's student and youth population and more “conservative” factions over the extent to which the foundational *velayat-e-faqih* principle was compatible with more liberal notions of popular sovereignty and individual freedoms such as freedom of expression – see M Milani “Reform and Resistance in the Islamic Republic of Iran” in J Esposito and R K Ramazani (eds) *Iran at the Crossroads* (Palgrave, New York, 2001); Human Rights Watch *Stifling Dissent: The Human Rights Consequences of Inter-Factional Struggle in Iran* (May 2001) pp6-9.

[50] This conflict had its most visible manifestation in the student-led civil unrest

which took place in 1999 following closure of student and other reformist newspapers and the imprisonment and assassination of leading dissident intellectuals by the security forces – see generally Human Rights Watch (*ibid*); United States Department of State *Country Reports on Human Rights Practices 1999: Iran* (25 February 2000) at section 1. Under official authorisation granted in the aftermath of riots in Qazvin in 1994 by which the *Basij* were decreed to be the mainstay for dealing with large-scale riots, *Basij* members played a leading role in the breakup of the 1999 student unrest – see the Jane’s report (*op cit*) at p4. The *Basij* have also been in the forefront of attacks on demonstrators protesting at the officially declared election result in the recent 2009 presidential election (as to which see below).

[51] Apart from this primary role in quelling such large-scale civil unrest, the *Basij* also constitute an important and pervasive bulwark against activity of a more individualised nature which the regime views as challenging the behavioural norms promoted by various state institutions to buttress the state-imposed view of a functioning Islamic society. As noted by the Jane’s report (*ibid*) at p3:

“Given its size and paramilitary nature the main utility of the *Basij* members to the government is to act as the eyes and ears of the Islamic Republic.”

[52] From its earliest days, the regime has considered that culture, and, in particular, the cultural orientation of the youth along officially sanctioned behavioural lines is a key source of regime stability. The regime has embarked on an orchestrated campaign of Islamicising not just the political, but also the cultural sphere. A cultural revolution was initiated by Ayatollah Khomeini in June 1980 which saw universities and colleges closed until 1982. Lecturers and teachers thought to be imbued with foreign ideologies such as liberalism and democracy were removed from their positions and more ideologically compatible replacements found – see D Hiro “Iran: the revolution within” *Conflicts Studies* No 208 (Centre for the Study of Conflict, London 1988) at p16. The institution of the *Basij* has been central to this process. Wehrey *et al* cite (*op cit*) at p39 a statement by a member of the Supreme Council for Cultural Revolution who observed that there were only “a handful of pious and religious lecturers at Iran’s universities” at the commencement of the regime but as of 2007 this had swelled to some 11,000 *Basij* lecturers. They also note the existence of the Lecturers *Basij* Organisation and the Student *Basij* organisation as important institutions in shaping the religious and cultural leanings of Iran’s student population.

[53] This campaign of cultural indoctrination in support of the ideals of the

Islamic revolution has taken on an ever more critical role as a result of demographic and economic pressures in Iran. Iran's demography is characterised by a substantial youth bulge – approximately 50% of the population are aged under 20, and some 70% under 30 years of age – B Khajepour “Iran's Economy: Twenty years after the Islamic Revolution” in J Esposito and R K Ramazani (eds) *Iran at the Crossroads* (Palgrave, New York, 2001) at p113.

[54] Unemployment remains a problem and has become a key political issue – see International Crisis Group (*op cit*) at p9; R Worth “As Iran gets ready to vote, economy dominates” *The New York Times* (10 June 2009). While up to date figures are hard to obtain, as at 2004, unemployment was estimated to be 34% among 15-24 year olds who officially constituted 25% of Iran's labour force – J Amuzegar “Iran's Unemployment Crisis” *Middle East Economic Survey* Vol XLVII No 41 (11 October 2004) <<http://www.mees.com/postedarticles/oped/a47n41d01.html>>. Amuzegar cites a number of reasons for this but two are relevant for present purposes. He states (at p2):

“Iran's protracted and intractable unemployment crisis may be traced to several separate factors. The first culprit is what a seasoned foreign reporter has called Iran's “demographic juggernaut”, ie the 3.9% annual population growth during 1979-88 encouraged by the Islamic Republic's desire to create a “20mn army” of Islamic revolutionaries. A left-leaning and anti-Western administration, which implemented this ultimately disastrous pro-natalist policy, unabashedly prided itself in the mid-1980s of having produced 10mn new “soldiers of Islam.” The 1980s baby-boom generation has now come of age facing a bleak job market and bedeviling the hapless Khatami government. The fateful irony is that a majority of these would-be Islamic soldiers have now turned out to be not only ardent secularists but also eager draft-dodgers by legal or extra-legal means (ie buying out their service obligation for cash, or emigrating abroad). The increased unemployment caused by the 1980s population bulge has, in turn, been exacerbated by an enormous labor surplus in rural areas, as well as the unprecedented influx of more than 2.5mn refugees and workers from Afghanistan, Iraq, Pakistan and other neighboring countries. These poor, desperate, and often unregistered workers have effectively chased native unskilled laborers out of the strained job market by demanding lower wages, and willing to work in less pleasant or more hazardous occupations.

The second factor for the double-digit unemployment has to do with the inadequate pace of economic growth. By a consensus of Iranian and foreign economists, Iran's gross domestic product must grow at a rate of at least 8% a year in real terms in order to absorb all the new job seekers, and by 9.5% to reduce unemployment below 10%. The Iranian economy's 5.4% average yearly growth in the last four years, however, has not been vibrant enough to generate needed outlets for all the new entrants with the result that the demand for new labor has lagged behind its supply by some 30%.”

[55] Not only does this pose an economic challenge in terms of job creation but also considerable political challenges. This large youth population has no direct knowledge of pre-revolutionary Iran and for whom the current regime and

institutions are the focal point of discontent as to their economic and social predicament. Khajepour argues (*op cit*) at pp110 and 121-122) that part of Iran's poor economic performance in the post-revolutionary period is attributable to the appointment of economic managers on the basis of ideological conformity over technical ability, and that the 1997 presidential victory of a pro-reformist candidate shows that the Iranian population is increasingly aware of the interaction between political and cultural reform and economic health. Amuzegar (*op cit*) at p4 remarks:

“Collateral Implications

Economic costs of unemployment as a drag on the economy are highly transparent and calculable. Labor is the most perishable of all productive factors, and a non-retrievable asset when lost. But socio-political and other non-material consequences of idleness – while equally deplorable human tragedies – are usually hidden and often not easily measurable. In Iran, as elsewhere, widespread joblessness as a straight road to poverty has been a destabilizing social force. According to the latest claim by a high welfare organization official, some 12% of Iran's total population, or about 9mn, live below the poverty line, and as many as another 17%, or 11mn are considered “needy.” Private estimates show as high as 40% of the population under absolute or relative poverty lines – with unemployment often cited as a major contributing factor. Jobless-related poverty, in turn, has been frequently found to be as the main cause of countless “social ills” including suicides, dysfunctional families, high divorce rates, drug addiction, illegal underground activities, violent crimes, prostitution, graft and corruption. Some 60% of nationwide suicides in Iran are directly traced to the absence of paying jobs.

Unemployment has also had its significant cultural backlash. Lack of suitable work for more than 300,000 college graduates each year has been a crucial factor in the “intellectual hollowing out” of the country. Estimates of Iran's technical and professional cadres leaving the motherland each year have ranged from 100,000 to 225,000 young men and women. Poor prospects for finding satisfying work have led thousands of Iranians studying abroad – including some 4,000 recipients of government scholarship – to choose not to return home even at the cost of forfeiting their “return pledge” bonds.

A shortage of adequate jobs is also an alarming threat to political stability. No matter which metaphor one wishes to accept or reject regarding the Islamic Republic's current unemployment malaise – the Achilles' heels of the regime, a time-bomb ticking to go off, or the last straw on the clerics' back – there could be no denying that the government's inability to meet this challenge is the most acute single issue. State officials – from the president on down to local police chiefs – regularly express their concerns regarding the eerie potentials of a protracted unemployment slump. Apart from clear prospects of street demonstrations, sit-ins, clandestine sabotage, and open riots, the unemployed youth are prone to fall prey to pernicious appeal of fanatical elements, anti-social cults, and outright terror groups. Potentials for political mischief are embedded in stressful idleness.”

[56] These fault-lines exist alongside a vibrant Persian-language blogosphere and a flourishing underground arts scene (in some urban settings at least) where a more cosmopolitan cultural perspective is embraced in opposition to the more narrow cultural settings permitted by the regime – see I Black “Unemployment and

inflation dim the glow of 30 year old new dawn” *The Guardian* (7 February 2009). That the Iranian clerical and security establishment view such developments as a potential source of instability is reinforced by Mansharof and Savyon “Iran in Preparations, Deployment to Withstand Possible Attack by the West” *Middle East Media Research Institute Inquiry and Analysis No 451* (3 July 2008). The authors note (p2) that statements by Iranian leader reveals that Iran’s defence doctrine has been profoundly affected by the United States’ occupation of Iraq. In 2003, under orders of Supreme Leader Ayatollah Khamenei, Iran began to establish passive defence councils to co-ordinate the activity of armed and popular forces. They state, at p1, that according to the Chairman of the Passive Defence Organisation (CPDO), the passive defence plan “aims to utilise all non-military strategies that could minimise the danger to its regime and stability”. The chairman of the CPDO is cited as stating:

“We must familiarise ourselves with the threats posed by the enemy – [for instance with his ability] to use his technological superiority in various domains such as economy, **society**, medicine, biology and so on. **[This will enable us] to protect ourselves as effectively [against these threats] or at least to minimise our vulnerability as much as possible.**” (emphasis added)

[57] That the *Basij* are intimately connected with this defence is made clear by Wehrey *et al* (op cit) at p32. They note that recent statements by the IRGC and other officials make clear their fixation on both the “psychological warfare” and “cultural onslaught” of the United States. Indeed, concern with this psychological and cultural onslaught has led to structural change in the Iranian security apparatus. In September 2007, command of the *Basij* and the IRGC were merged under a single individual. Guidelines issued by Supreme Leader Ayatollah Khamenei emphasise that the IRGC was to concentrate on threats from internal enemies with assistance in the case of external aggression shifting to the second order of priority.

[58] That the function of the IRGC in general, and the *Basij* in particular in countering this ‘cultural onslaught’ is to preserve the constitutional foundation of the Islamic Republic as manifested in *velayat-e-faqih* is also clear. In what Wehrey *et al* describe as a “militarising of civil society” the function of the IRGC has been to indoctrinate young Iranians with ideological fervour revolving around the theory of *velayat-e-faqih*. The political bureau of the IRGC has its own website, monthly magazine and runs ideological courses and summer camps for propagating these values. As an integral component of the IRGC, the *Basij* have developed something of a social omnipresence. As noted by Wehrey *et al* (*ibid*) at

p28:

“Today, the Basij are present in virtually all sectors of Iranian society; there are specially organised Basij units for university students, local tribes, factory workers and so forth. There is a strong ideological component to this omnipresence. As stated by a local IRGC commander in 2001,

“In the next decade, our problem will be the cultural onslaught and the Basij must block its progress ... instead of creating military bases, our policy today is to create cultural societies.” (emphasis added)

[59] The Jane’s report (*op cit*) at p4 comments that the integration of the *Basij* and IRGC commands “suggests that internal threats are now the primary concern for the Iranian government”. Writing before the recent presidential elections the report states that the *Basij* can be expected to “be spearheading campaigns to root out what are regarded as cultural, moral and political dissention”. Importantly, Wehrey *et al* (*op cit*) at p47 note that one of the functions of *Basij* popular training is:

“To deter and defeat soft “coup” attempts within Iran – meaning the formation of dissident intellectual groupings, civil society, and reform-oriented student organisations. ... There is an explicit fear amongst conservative regime figures that reformist press outlets, western-supported non-governmental organisations, and liberal intellectuals are conspiring to erode and dismantle the foundations of the Islamic Republic in a manner akin to the “colour revolutions” that swept parts of the former Soviet Union in 2003-2005. Basiji battalions are seen as a counter-mobilising force against effort, both through their expansive cultural education and indoctrination and also in the form of a visible street presence.”

[60] It is this visible street presence which has been commented upon by at least one western embassy official consulted by the Danish Immigration Service in its Fact-finding Mission *Iran* between 24 August and 2 September 2008. In its report *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc* (DIS 2-2009) at p22 it is stated:

“A western embassy stated that for the last two years there has been an increase in the presence on the streets of Tehran. The Basij consists of both men and women.

...

A western embassy confirmed that the presence of the Basij in the streets of Tehran increased during the first six months of 2008. The embassy, which is located in the northern part of Iran has witnessed a rise in the number of women wearing the black top to toe dress (“chador”) in the streets of northern Tehran. Most likely, this is a consequence of the Basij being much more present and visible in this area. ... “

The report continues at p23:

“Not only is there an increased presence of Basij in the streets, but recently, they have also been stricter in addressing anyone wearing bright colours and boys or men with western haircuts. However there is some “logic” in the way the Basij

works. During spring and summertime they crackdown on anyone who is considered to be immorally dressed. They check to see if clothes are too tight and revealing and if the colours are too bright. The Basij are aware that in the summertime many girls prefer to wear bright colours and loose scarves on warm days. It is however, difficult for girls and women to dress in adherence with the unwritten rules that the Basij apply, as it is difficult to know what colours may be deemed as too bright. One day it may be one colour the other day it may be another. This exemplifies the arbitrariness of the working methods of the Basij.”

[61] This traverse of country information establishes that choice in clothing and hairstyle have, in the context of Iran, an overtly political quality. The extent to which men and women comply is a signal of their level of acceptance of the state-imposed view of how an Islamic society should be ordered. For conservative elements within the clerical establishment currently controlling the Iranian state security apparatus, non-compliance at this level represents the thin edge of a larger cultural wedge, the end-point of which, when combined with widespread dissatisfaction with the economic lot of Iran’s large youth population, may be some form of soft-coup.

[62] To be clear, however, that the *Basij* functions in this context as the immediate and primary defence against such cultural assault on the constitutional foundations of the Islamic Republic is not such as to elevate those males who choose to adopt western popular culture as their badge of self-identity (such as by wearing “western” style clothing or listening to rap or rock music) into revolutionaries, nor does it entitle such people to insist they all have a well-founded fear of being persecuted for doing so by that reason alone. Far from it. As Oliver Roy remarks, “Daily life in Iran is less ‘Islamic’ than in many Muslim countries”. While cultural anti-Westernism exists, “it is not characterised by the hypersensitivity found in some Sunni neofundamentalist milieus” – see *The Failure of Political Islam* (Harvard University Press, Cambridge MA, 1996) at p181. Indeed, as the appellant’s case amply demonstrates, interaction between young males embracing aspects of western popular culture and the *Basij* typically may involve only minor, if unpleasant, harassment not rising to the level of being persecuted.

[63] Nevertheless it is important to recognise that national security is, at the present time at least, perceived by the Iranian regime as being under threat not just by continued demonstrations by Iran’s ethnic minorities (see here the recent decision of the Authority in *Refugee Appeal No 76312* (3 June 2009) in relation to an ethnic Azeri), but also (less directly) by the substantial youth component of Iran’s majority group population choosing *en masse* to reject the state-sanctioned

view of how Islamic society should be ordered on a day-to-day level. What may seem an utterly ordinary and trivial choice in New Zealand, takes on a fundamentally different hue in the context of Iran and Mr Mansouri-Rad is on eminently solid ground when he submits that claims for refugee status must be examined in the latter, not the former context.

[64] While it is important not to overlook the political context of such lifestyle choices in Iran, it is equally important to stress that whether the experiences of any young person at the hands of the *Basij* and/or other elements of the state security apparatus because of these lifestyle choices amounts to their being persecuted is fact and context specific. Each case must be decided by reference to its own facts viewed against the prevailing socio-political conditions in Iran at the time the decision is made.

The recent post-election violence

[65] Into this milieu must be added the recent and ongoing post-electoral violence and unrest. It hardly needs stating that it is now widely accepted that the protests which have taken place in relation to the disputed recent presidential election in Iran appear to be the biggest anti-regime demonstrations since the Revolution of 1979. Protests began on 13 June, following the release of disputed results of the election held on 12 June 2009 in which, after an extremely short period of time, the incumbent, Mahmoud Ahmadinejad, was declared to be the victor and the result enthusiastically endorsed by the supreme leader Ayatollah Ali Khamenei despite pre-election polls widely pointing towards an election victory by his rival, the relatively reformist candidate Mir-Hossein Mousavi. Throughout 13, 14, 15 and 16 June 2009 demonstrations involving hundreds of thousands of people took place in Tehran and other urban centres in Iran. On 17 June 2009, the authorities began a harsh crackdown on dissent and began arresting leading dissidents as well as using increasingly brutal methods to suppress the demonstration. The significance of this for present purposes is that the *Basij* have been at the centre of the government crackdown – beating and harassing protestors and engaging in unprovoked violence. This has included storming student dormitories, beating students and ransacking their rooms. See Human Rights Watch *World Report Iran: Halt the Crackdown – End Violent Attacks on Protestors, Arrests of Critics* (19 June 2009).

[66] While the extent of public protest has declined in the face of the attacks by

the *Basij* and other elements of the Iranian security apparatus, the legitimacy of the election and the state response is still very much in issue. The political crisis is far from over. Mousavi has been labelled in an influential pro-regime newspaper as an 'agent of the US' prompting some speculation that he may face arrest – see R Tait "Mousavi labelled 'US agent' as Iran charges UK official" *The Observer* (5 July 2009). In a sign of deepening splits amongst the clerical establishment, the Assembly of Scholars and Researchers at the Qom seminary have called the outcome of the election invalid and directly challenged the credibility of the Guardian Council which has endorsed the election result – see J Borger "Senior Iranian clerics reject re-election of Mahmoud Ahmadinejad: Qom assembly calls for release of political prisoners" *The Guardian* (5 July 2009).

[67] On Friday 17 July 2009, a controversial speech was given by former President Hashemi Rafsanjani during Friday prayers at Tehran University in which he again questioned the election results, stating that the Islamic Republic was in crisis and the government had lost the trust of the people. He was thus directly challenging Khamenei's position. Security forces used teargas and arrested dozens of persons in attendance. Mousavi himself has met with families of some of those who have been detained for protesting the result and demanded their release. Former President Khatami has made a call for a referendum to be held under the auspices of an "impartial body" further delegitimizing the position taken by the Guardian Council which had declared the result valid (despite its officially sanctioned but widely derided partial recount of some disputed ballots revealing some irregularities). Finally, there are some signs of unease within the military apparatus. On Friday 17 July 2009, 36 army officers were arrested by the security forces which had learnt of the officers' plan to attend, in full uniform, the speech by former President Hashemi Rafsanjani at Tehran University later that day.

[68] In response to this barrage of direct criticism of the constitutionally most powerful political institutions (the office of Supreme Leader and Guardian Council) by such senior political figures, Ayatollah Ali Khamenei has issued a blunt warning that further division could lead to a collapse of the country's ruling elite – see R Tait "Thirty-six army officers arrested in Iran over protest plan" *The Guardian* (19 July 2009); J Borger "Ali Khamenei warns of 'collapse' after Iran referendum calls" *The Guardian* (20 July 2009). While it is impossible to ascertain the extent to which this constitutes political posturing, the fact that the Supreme Leader of Iran has felt compelled to make such a statement only serves to underscore the seriousness of the political crisis in Iran at the present time.

The prevalence of torture and other forms of ill-treatment of detainees in Iran

[69] Country information establishes that the torture and detention of detainees remains a common feature of the Iranian criminal justice and security landscape.

As Amnesty International *AI report: Iran (2008)* states:

Torture and ill-treatment of detainees were common, facilitated by prolonged pre-charge detention, denial of access to lawyers and family, and a longstanding pattern of impunity for perpetrators.

See also, Human Rights Watch *World Report: Iran 2008* (January 2009) at p1 and United States Department of State *Country Reports on Human Rights Practices 2008: Iran* (25 February 2009) at section 1a.

Application to the present case

[70] The appellant's predicament is shaped by the cultural conflict taking place on the streets of Iran, in which the *Basij* constitute the government's front-line troops. The appellant fled Iran after being involved in a minor altercation with a member of the *Basij* who had assaulted him and wished to arrest him in respect of an offence he did not commit. This incident comprised the last in a long line of minor harassment the appellant suffered at the hands of local *Basij* forces for not complying with the state-sanctioned cultural norms. While at one level, his shove of the *Basij* member constituted an assault within the realms of pure criminal justice, given the facts of this case, it is inappropriate to characterise his predicament as a fear of prosecution and not persecution. As Mr Mansouri-Rad rightly points out, a number of charges have been levelled against him of which the assault on the *Basij* member forms only one. This evidences a degree of institutional animosity towards him.

[71] Should the appellant be returned to Iran there is a real chance that he would be arrested, if not on arrival, then shortly thereafter. Given recent and ongoing tensions in Iran it can be reasonably expected that there will be a heightened sensitivity on behalf of the Iranian authorities to persons of the appellant's ilk. He is a young man of strong views which are not supportive of the regime. Examination of his file will show a multiplicity of broken undertakings to comply with the dress code requirements and respect the members of the *Basij*. This negative profile will heighten the risk that he will be subjected to some form of serious harm in detention amounting to being persecuted which remains commonplace during detentions in Iran.

[72] For these reasons, the Authority is satisfied that, on the facts as found, there is a real chance of the appellant being persecuted if returned to Iran. It follows that the first principal issue is answered in the affirmative.

Nexus to Convention ground

[73] For the above reasons, there can be no doubt that the appellant's predicament is contributed to by his actual political opinion and a negative one being imputed to him. The second principal issue is also answered in the affirmative.

CONCLUSION

[74] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B L Burson"

B L Burson
Member