

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76033

REFUGEE APPEAL NO 76034

REFUGEE APPEAL NO 76035

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Counsel for the Appellants:</u>	C Curtis
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	30 May and 28 June 2007
<u>Date of Decision:</u>	27 August 2007

DECISION

[1] The appellants are a family of nationals of the Islamic Republic of Iran. For convenience they are referred to as “the husband”, “the wife” and “the child”. They appeal against the decisions of the Department of Labour (DOL) declining their applications for refugee status.

[2] The family members claim that they are at risk of being persecuted if returned to Iran because of the husband’s friendship and business dealings with members of the Baha’i faith. The wife and the child also claim that the discrimination which they will face as females in Iran would amount to being persecuted.

[3] The appeals turn in part upon whether their claims are credible and in part upon when they are well-founded. This is assessed following the summary of their accounts which appears below.

[4] The child, an infant, is too young to give evidence in person. The wife and husband are appointed responsible adults for the purposes of representing her interests under s141B of the Immigration Act 1987 (the Act).

[5] The hearing was originally scheduled to proceed on consecutive days at the end of May 2007. Unfortunately, the interpreter was unwell on the second day and accordingly, there was a short delay of approximately four weeks until the second hearing day. Nothing turns upon that fact.

The husband's evidence

[6] The husband was born and raised in a city in the south of Iran, where he lived for most of his life prior to leaving Iran with his family in 2006.

[7] One of the husband's older brothers left Iran in the early 1980s as a result of his political activities. This had created problems for that brother and had given rise to some harassment of the appellant's family around that period. However these concerns were not long-lasting. They had no prolonged impact upon the husband, nor did they contribute to his need to leave Iran in 2006 or his inability to return there now.

[8] After leaving school at the age of about 16, the husband held a job as a street vendor, operating out of a rented kiosk. He eventually purchased the kiosk and then in turn leased it to a friend while he performed his military service. After his release from the military at the age of 20, the husband worked in the kiosk again for another two years before selling it in order to purchase a taxi. He drove that for three years before working for a friend in a clothing shop for about one year. The husband then decided to open his own clothing store.

[9] The husband used the proceeds from the sale of his kiosk and his car, money borrowed from his father, his own personal savings and an additional 10m *tomans* borrowed from one of his brothers to purchase business premises and stock. He opened his shop in early 2001.

[10] The husband and the wife became engaged at about the same time and married about a year later, in 2002. Their difficulties began on the evening of their

wedding day.

[11] The wedding party drove around the city sounding car horns in the traditional manner when it was stopped at a checkpoint. One of the security men seized the opportunity to demand a bribe from the new bridegroom. While the husband had acquiesced to such demands in the past, he did not wish to do so on the day of his wedding. He telephoned an acquaintance in the senior ranks of the police force who asked to speak to the security man concerned. After a brief conversation, to which the husband was not party, the security man desisted in his requests for a bribe. The party was allowed to leave.

[12] A few days later, the husband's contact in the police force asked him to attend the police premises to sign a brief report about the matter. Around that time, the husband received an anonymous telephone call from a man who promised to "make him pay". He inferred that the caller was the aggrieved security guard, but thought nothing more of it at that time.

[13] About three weeks after the wedding, the husband was in his shop with KK, who had been a friend of the husband since childhood. KK was born and raised a Baha'i, but had been harassed and mistreated by the authorities so systematically that, a short time before this encounter, he had converted to Islam.

[14] Without warning, three members of the security forces entered the shop. The husband and KK were arrested and bundled into a car. They were blindfolded and taken to a detention centre where they were held for three days. During that period, the husband was beaten and suffered facial injuries. He was questioned repeatedly about why he was associating with Baha'i and asked whether he had opened his shop with their financial assistance. He was accused of receiving everything he had from Baha'i people. The husband denied this and said that he had worked very hard for what he had and that his Baha'i acquaintances were just friends.

[15] After three days, the husband was taken before a court. He was given a letter which alleged that he had contact with Baha'i people and told him that he was not able to leave Iran until the matter had been resolved. Given his injuries, the husband was allowed to contact his father. He came to the court and lodged the deeds to his home as a bond in order to procure the husband's release on bail. During the next two years, the husband was summoned to attend court three or four times for brief procedural matters.

[16] After his initial release, the husband went to his parents' house. He subsequently heard that KK made his way to the United States after his release. The husband tried to contact KK's mother to find out more, but she did not wish to speak to him.

[17] The husband's shop was closed by the authorities pending their investigation into his activities. He and his wife therefore had no income. He did some small-scale trading, but the work was sporadic and not well-paid. His wife had some jewellery which she sold from time to time.

[18] The husband was summoned to attend court in 2004. The judge delivered an oral decision telling him that because of his illegal contact with Baha'i, all of his assets had been confiscated. He lost his business premises and all of the stock which had been in it. The authorities also confiscated the home which the husband's parents had gifted to him after his wedding.

[19] The husband and wife had to move in with the husband's parents until they were allowed to live in an old house that the parents owned.

[20] By the time the child was born in 2005, the husband and wife were in desperate financial circumstances. The husband had by then been virtually unemployed for around three years and the wife had never worked. After the birth of the child, their expenses began to mount further.

[21] Throughout that period, the husband had remained in contact with his Baha'i friends. One of them, EE, visited to congratulate them on the birth of the child. He was so moved by the appellants' difficult circumstances that he made a business proposition to the husband. EE offered to invest a significant sum of money into another clothing store. EE was to be a silent partner in the business and would reap the rewards of an investment that he would not otherwise have had available to him because he is Baha'i. The benefit to the husband was that he would be employed again and would be able to support his family.

[22] The husband and wife readily agreed. After purchasing new stock, they opened a new shop in mid-2005. The husband operated his new business for around a year without any difficulty.

[23] One morning in May 2006, as the husband went to open his shop, he was met by EE's son, FF. FF was distressed because his family members had been arrested that morning. FF said that he knew that a lot of Baha'i people had been

taken away. FF had avoided detection, but was confused and did not know what to do. The husband took him to a restaurant across the road to get some food. While they were there, they saw police officers enter the husband's shop.

[24] FF then told the husband that he had to return to his own home to collect some documents. The husband tried to discourage him, but FF was adamant that he would be fine. He said that he would call the husband in one hour. After an hour had passed without contact, the husband tried to telephone FF. Someone else answered FF's mobile telephone, so the husband hung up.

[25] He then telephoned his wife to tell her that she needed to dispose of various items in case the authorities searched their house. He was concerned about photographs showing EE with the family, and about business records which showed that he rented the business premises on behalf of EE.

[26] He was also worried about a Baha'i book which EE had left at their house a few days before. EE had visited to go through business documents and financial plans. He had come from a meeting from his religious community and noticed the husband glance at a Baha'i text he had with him. EE asked if the husband would like to read it. The husband did not want to be rude or discourteous and therefore said that he would. After EE left, the husband put the book to one side without giving it another thought.

[27] Unfortunately the wife was not at home when the husband made contact with her so the husband collected her in a taxi and went to a friend's place. The husband telephoned his father-in-law and asked him to check their house to see if the police had been. The father-in-law called back some time later and said that there were people at the appellants' house and that the authorities had been looking for them. The father-in-law said that there was news that a lot of Baha'i people were being arrested and suggested that it would be sensible for the appellants to leave Shiraz for a few days.

[28] The husband and wife decided to stay with a friend in Tehran while they waited to see what happened. While they were there, the husband's father-in-law telephoned and told them that the husband's family had been interrogated by the authorities as to the husband's whereabouts. Upon hearing this, the appellants realised that they needed to leave Iran.

[29] The husband had a contact outside Iran who agreed to help them leave

illegally. They negotiated payment of US\$35,000, which was met by the wife's father. They travelled to Dubai by boat. From there they made their way to New Zealand, where they arrived in November 2006.

[30] They claimed refugee status upon arrival at the airport. After interviewing the husband and the wife in December 2006 a refugee status officer of the DOL issued decisions, dated 16 March 2007, declining their applications.

[31] The husband says that if he were to return to Iran he would be apprehended and he believes that he would be executed.

The wife's evidence

[32] The wife was born and raised in Shiraz. Her evidence broadly corroborated the account given by the husband. However, much of her evidence was hearsay rather than a first-hand account. She relied upon what she had heard from the husband. While her husband experienced difficulties as a result of his friendships with Baha'i, the wife did not personally experience any direct problems with the authorities.

[33] The wife left school at the age of 18 but has never worked outside the home. She said that she did not think of trying to get a job even during the period when the husband was unemployed, because she had no particular skills.

[34] The wife said that she did not want to return to Iran. She said that even if she did not have any problems in the future because of her husband's difficulties, she wanted to live in a country where she was free to make decisions about her own life. She said she had been forced to wear the *hijab* and that she objected to having to do so. She said that she also wanted to raise her child in a country where the child would have the freedom to make decisions about her own life.

The child

[35] As already noted, the child is too young to give evidence before the Authority and accordingly her interests were represented by her parents. The wife said that if the child were to return to Iran, she would be subjected to the same restrictions to which all women in Iran are subjected. From the age of five, she would be required to wear the *hijab* and would have imposed upon her the same restrictions of dress and behaviour that other Iranian women must endure.

Material received

[36] Prior to the interview with the Authority, counsel forwarded written submissions in a memorandum dated 9 May 2007. A supplementary statement of the husband was received on 28 May, together with a copy of the identity card of the husband's sibling and an item of country information.

[37] When the hearing resumed on 28 June 2007, the Authority provided counsel with a bundle of country information relating to the predicament of Baha'i generally in Iran, and relating to events in Shiraz in May 2006.

[38] Counsel sought and was granted leave to file additional closing submissions and country information following the hearing. These were provided to the Authority under cover of a letter dated 23 July 2007.

THE ISSUES

[39] 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."

[40] 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 APPELLANTS' CASE

Credibility

[41] Before addressing the principal issues, it is necessary to determine whether the appellants are credible witnesses. For the reasons set out below, the Authority

finds that their core account relating to the problems arising out of the husband's relationship with Baha'i is false. It is implausible and unsupported by country information. The Authority concludes that the appellants have tailored a false account around genuine incidents which took place in Shiraz in May 2006.

Implausible accounts

[42] It bears repeating that the appellants' claims arose as a result of the husband's friendship with Baha'i. The husband was falsely accused of having been commercially involved with Baha'i. He was detained, mistreated and eventually convicted of an unspecified offence. His house and business were seized and the family was deprived of a home and livelihood. The gravity of his offending was such that, when he was sentenced, the court warned the husband that in future the consequences of similar actions would be even more serious.

[43] Despite all of this, the husband claims that shortly afterwards he entered into a business arrangement of precisely the sort that had caused all of his problems with the Iranian authorities. He claims to have signed a document confirming the arrangement with his Baha'i friend, EE, in writing. He then supposedly conducted business meetings with EE at his own family home. If this were not enough, he claimed that his wife befriended EE's wife and that their families socialised together.

[44] The Authority does not believe that this happened. The claim is implausible and the Authority rejects it.

[45] The husband's explanation for supposedly adopting such a dangerous and defiant course of action is that his family was in such desperate financial circumstances that he had no option. Again, the Authority rejects that explanation. According to his account, the husband had always been able to obtain work in the past. From the age of 16, he had owned and operated a kiosk which he built up and sold at a profit before operating a taxi business. After obtaining experience in a retail venture, he had sold his taxi in order to open his own shop.

[46] During their period of supposed hardship, the wife said that it did not even occur to her to look for work herself. It is also important to note the context of the appellants' family connections. The appellants claim that the wife's father paid the sum of US\$35,000 to help them leave the country. That is a significant sum which could easily have enabled the husband to start his own business venture.

[47] In this context, the Authority does not accept that their financial circumstances were as hopeless as the appellants represent them to have been.

[48] The appellants' account is implausible in various other respects. For example, the Authority does not accept that a Baha'i man in EE's position would dare to take the risk of entering into business with the husband, even if he felt sorry for his friend. If the appellants' account were true, then EE knew that the appellants had been targeted by the Iranian authorities because of the husband's perceived link to Baha'i. The danger inherent in any business relationship between them was not just to the appellants, but to EE, particularly given the recent scrutiny and punishment of the appellants by the authorities.

[49] Nor does the Authority believe that EE would be cavalier enough as to leave a copy of a Baha'i holy book with the husband, or that the husband would have been reckless enough to accept it.

[50] It is implausible that EE would attend business meetings at the appellants' home, and also that their business relationship would be recorded in writing. When asked why he had signed a document recording the arrangement, the husband prevaricated before offering the absurd explanation that he took the precaution of not putting his name in it.

[51] The husband also said that while the document recorded the transfer of money, it made no reference to the business dealings. Again, the husband's attempted explanation was an opportunistic attempt to circumvent the flaw in his account. If he had signed a document confirming that he had received a significant sum of money from a Baha'i, that would amount to an offence of precisely the type of which he claimed to have already been convicted. It would be irrelevant that the document did not explicitly refer to a business relationship.

[52] The Authority does not believe him.

Further implausibilities

[53] Reference can be made to various other aspects of the appellants' accounts to support the finding that their evidence is not credible.

[54] For example, during the two years between his detention and the final decision of the court in 2004, the husband took no steps to convince the court that his business and his assets were the product of his own hard work and nothing to

do with Baha'i. It is difficult to understand why this would have been difficult to demonstrate given that he claims that the house was a gift from his father and that the business had been financed through his own savings and money gifted or borrowed from his family members.

[55] The Authority rejects the husband's explanation that he did nothing because he was not expecting the court to make an adverse decision. The authorities had come to his shop, arbitrarily detained and arrested him, beaten him, closed his shop for two years and prosecuted him through the court. It is implausible that the husband would have remained so optimistic about a fair and just outcome.

[56] It is also worth noting that the account relating to EE's son, FF, is contrived. He was supposedly able, somehow, to evade arrest, despite the detention of the rest of his family members. He then sought out the husband. This meant that the husband was fortuitously absent from his own business premises at the very moment that the authorities came to arrest him, yet he was still close enough (at a café with FF) that he was able to observe the authorities as they approached his shop. In the context of all of the concerns which the Authority has recorded already, this evidence is clearly contrived and it is rejected.

The arrests of Baha'i in Shiraz in May 2006

[57] It is clear that there were arrests of Baha'i in Shiraz in May 2006. However, it is also clear that almost all of the individuals detained were released within a short period.

[58] The following extract appears in the United Nations General Assembly Report of the Special Rapporteur on Freedom of Religion or Belief (8 March 2007):

"According to the allegations, on 19 May 2006, Ms Haleh Roohi, Ms Raha Sabet and Mr Sassan Taqva were arrested together with 51 other Baha'i in the city of Shiraz. The arrested Baha'i were involved in community work, with a local non-governmental organisation, at the time of their arrest. They were in possession of a letter of permission of the Islamic Council in Shiraz for this work.

On 20 May 2006, the judge in charge of all cases stated that most of the detainees would be released soon. This was confirmed by an official at the Ministry of Information in Shiraz who informed a family member that the detainees would be released within 48 hours. None of the persons arrested have been formally charged with an offence. 51 Baha'i have since been released but Ms Haleh Roohi, Ms Raha Sabet and Mr Sassan Taqva remain detained." [para 195-196].

[59] These events are also described in various other documents, including "54 Baha'is arrested in Iran" Payvand's Iran News (25 May 2006); "Iran: 51 arrested Baha'is released on bail; 3 remain in jail" Payvand's Iran News (26 May 2006) and

Human Rights Watch Iran: Scores arrested in anti-Baha'i campaign (6 June 2006).

[60] The Authority notes that only three individuals were held in custody for more than a day after the arrests. While not necessarily determinative, it is relevant that EE's name did not appear in any of the country information about those events. In that context, it is also relevant that no supporting evidence about, or testimony from, EE, was made available to the Authority.

Conclusion relating to the appellants' core account

[61] For all of these reasons, the Authority rejects the appellants' claim that they have a well-founded fear of being persecuted in Iran because of their relationship and association with Baha'i.

[62] The Authority therefore turns to consider the additional claims made by the wife and on behalf of the child.

Claims of the wife and the child

[63] The wife claimed that if she were to return to Iran she is at risk of being persecuted because she is a woman. The Authority accepts that Iranian society is patriarchal and that women are treated substantially unequally, to their detriment. It is also accepted that many women in Iran are discriminated against. It may be that the wife herself falls within that category of Iranian women.

[64] However, the wife did not give any evidence which indicates that she has ever suffered serious harm in the past because of her gender. The focus of the Refugee Convention is, of course, forward-looking and the absence of past persecution does not necessarily mean that an appellant will not suffer serious harm in the future. However, it may provide a guide.

[65] The Authority has repeatedly noted that discrimination is not in itself sufficient to establish refugee status. Nor does every breach of a claimant's human rights amount to persecution; see *Refugee Appeal No 71404* (29 October 199) at [65]-[67]. The Authority is satisfied that there is no evidence before it which establishes that if the wife and child were to return to Iran, either one of them would experience discrimination because of her gender (or for any Convention reason) at a level which amounts to being persecuted.

Additional submission

[66] Counsel submits that it makes no sense for persons in the position of these appellants to leave behind their friends and family to apply for refugee status in New Zealand unless they were doing so for legitimate reasons. Counsel submits that they did so

“... knowing that under our present rule of law, if they try to return to see their family members ever again in Iran they are at risk of being served with cancellation proceedings.”

[67] In fact, neither the husband nor the wife suggested that they were aware of New Zealand law on the cancellation of refugee status at the time they left Iran or when they applied for refugee status.

[68] Turning to the substantive submission made by counsel, the Authority’s focus is not upon why the appellants came to New Zealand. It would, in many cases, be an impossible task for the Authority to affirmatively discern the real reasons why claimants might do so.

[69] The Authority’s task is to determine whether, objectively and on the facts as found, the appellants have a well-founded fear of being persecuted in their home country. By virtue of ss129G(5) and 129P(1) of the Act the appellants bear the responsibility of establishing their claims; see also *Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA). If they are unable to do so, their motive for leaving their home country becomes irrelevant.

CONCLUSION

[70] The Authority finds that none of the appellants have a well-founded fear of being persecuted in Iran. In respect of each appellant the first principal issue is answered in the negative. Accordingly, the second issue does not fall to be addressed in respect of any of them.

[71] The appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. Their appeals are dismissed.

“A N Molloy”
A N Molloy
Member

