

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76068

REFUGEE APPEAL NO 76069

REFUGEE APPEAL NO 76070

REFUGEE APPEAL NO 76071

REFUGEE APPEAL NO 76072

AT AUCKLAND

<u>Before:</u>	M A Roche (Member)
<u>Counsel for the Appellant:</u>	Appellants represented themselves
<u>Counsel for the Respondent:</u>	J M Rushton
<u>Date of Hearing:</u>	11, 12, 13 & 14 February 2008
<u>Date of Decision</u>	18 April 2008

DECISION

[1] These are appeals by the members of an Iranian family against decisions dated 16 May 2007, made by a refugee status officer of the Department of Labour (DOL), to cancel the grants of refugee status to the appellants on the ground that their refugee status may have been procured by fraud, forgery, false or misleading information or concealment of relevant information.

[2] The essential issue to be determined in these appeals is whether false details provided by the appellant wife to the DOL procured the appellants' recognition as refugees.

[3] The appellants are members of the same family. The two older appellants are husband and wife and the three younger appellants are their two sons and daughter. The daughter and the older son are adults while the younger son is a minor, being 17 years of age. The older appellants will be referred to as “the husband” and “the wife” respectively. All the appellants will be referred to collectively as “the appellants”. The five appeals were heard together because they derive from the same facts and issues. The appellants consented to having the evidence of each of them treated as evidence in their own appeals.

[4] The appellants were unrepresented at the hearing. Their notices of appeal were filed on 28 May 2007 by Frank Deliu of Equity Law. The appeals were first set down for hearing on 8 October 2007. At the appellants’ request, the hearing was adjourned until 11 February 2008 because the appellant daughter feared that the stress of the hearing could exacerbate the difficulties she was experiencing with her pregnancy.

[5] On 24 January 2008, Mr Deliu made another application for an adjournment of the hearing on the basis that the appellants had received a very limited grant of legal aid that would be insufficient to cover the cost of counsel conducting the hearing. In a memorandum, Mr Deliu noted that the grant of legal aid that had been made to the appellants was for the purposes of providing an opinion as to the likelihood of the success of the appeals and that a final determination of whether legal aid would be granted would be unavailable prior to the scheduled hearing date. The application for a second adjournment was opposed by the DOL.

[6] On 29 January 2008, the Authority declined Mr Deliu’s request for a second adjournment and referred him to the decision of Venning J in *Aivazov v Refugee Status Appeals Authority* [2005] NZAR 740 where the High Court upheld the long-standing principle that the grant of legal aid is an issue of remuneration between practitioner and client and the fact that it has not yet been granted is not grounds for an adjournment. In its letter to Mr Deliu, the Authority noted its view that there had been ample time to prepare the cases on appeal for hearing and to resolve remuneration issues.

[7] On 5 February 2008, Mr Deliu filed a memorandum advising that legal aid had still not been approved for the appeals and withdrawing from the proceedings.

[8] On 11 February 2008, the appellants appeared and requested an adjournment of the hearing. The ground on which the adjournment was sought was that the wife’s mother had died in Tehran two weeks previously and the

appellants, particularly the wife, were feeling upset and emotional. This new adjournment application was opposed by counsel for the DOL, Ms Rushton. The Authority declined the application. In doing so, the Authority noted that the appellants would be able to take frequent breaks should they experience any difficulty giving their evidence because of their bereavement and that the Authority would take the bereavement, and the effect it may have on their ability to give evidence, into account in assessing their credibility and demeanour.

[9] The appellants had indicated that they were seeking a short adjournment. After being advised that it would not be possible to re-schedule the appeals for several months, they indicated that if a short adjournment was not available it would be their preference to proceed because of the stress the anticipation of the hearing was causing them. The Authority records that, despite their bereavement, the appellants were able to give their evidence with no apparent difficulty.

JURISDICTIONAL ISSUES

[10] Pursuant to s129L(1)(b) of the Immigration Act 1987 (“the Act”), where a person has been recognised as a refugee by a refugee status officer and where it appears such recognition may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereinafter referred to as fraud), a refugee status officer may determine to cease to recognise the person as a refugee. Such a decision may be appealed to this Authority pursuant to s129O(2) of the Act.

[11] There are two stages to the Authority’s enquiry. First, it must determine whether the refugee status of the appellant “may have been” procured by fraud. If so, it must then determine whether it is appropriate to “cease to recognise” the appellant as a refugee. This latter determination will depend on whether the appellant currently meets the criteria for refugee status set out in the Refugee Convention: *Refugee Appeal No 75392* (7 December 2005) [10]-[12].

[12] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of the burden or onus of proof. Nonetheless, it is the Authority’s view that, in “cancellation” proceedings, it is the responsibility of the DOL to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also our view that the term “may have been procured by fraud, forgery, false or misleading

representation, or concealment of relevant information” is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006).

BACKGROUND

The appellants’ refugee status

[13] The husband and wife are both aged in their late 50s. They lived in Tehran prior to coming to New Zealand and their children were all born there.

[14] On 20 June 1997, the wife arrived in New Zealand with the two sons who were aged five and fourteen respectively, and claimed refugee status at the airport.

[15] The basis of her claim was as follows:

- (a) Since 1984 her husband had operated a business which involved the illegal distribution of video tapes, including anti-government video tapes.
- (b) In December 1995, following the arrest of an associate by the Iranian authorities, the husband disappeared.
- (c) He subsequently contacted her and told her that he had left Iran and sent her foreign currency.
- (d) In January 1997, she was arrested by the *Komiteh* when she attempted to change some of this currency on the black market. Although she was released, she had a hearing scheduled in the Revolutionary Court.
- (e) Fearing a lengthy term of imprisonment she fled Iran using her sister’s passport.
- (f) She was able to bring her sons with her because her sister had the details of her own two sons endorsed in the passport who were of similar age and appearance to the appellant sons. She left her daughter in the care of relatives.

- (g) After arriving in New Zealand, the wife heard from her brother that the husband was in Thailand and was attempting to get the daughter out of Iran.

[16] On 22 October 1997, the wife was interviewed by the Refugee Status Branch (RSB) in respect of her claim. In a decision dated 19 November 1997, the wife was recognised as a refugee. In a letter to the wife's legal representatives dated 19 November 1997, the DOL advised that the wife's application for refugee status had been approved and that this approval included her two sons in New Zealand and her husband and daughter overseas. The husband and daughter, who were both at the time residing in Tehran, subsequently applied for and were granted residence visas and arrived in New Zealand on 13 December 1998.

CANCELLATION PROCEEDINGS

[17] On 22 March 2005, the appellants were served with notices of intended determination concerning loss of refugee status ("the cancellation notices") in accordance with s129M of the Act and Regulation 11 of the Immigration (Refugee Processing) Regulations 1999.

[18] In the notice, the refugee status officer stated her preliminary view that the grants of refugee status conferred on the appellants may not have been properly made because they may have been procured by fraud and set out her reasons for reaching that view.

[19] At the core was the allegation that the husband had been outside Iran between 21 July 1991 and 19 August 1997 and therefore the core events in the appellants' refugee account, which related to events involving the husband in Iran during this period, could not have occurred.

[20] In addition, a passport obtained by the wife from the Iranian Embassy in Wellington in July 1999 recorded that she had legally departed from Iran on 22 January 1997. This contradicted her claim to have departed illegally using her sister's passport.

[21] It was also noted that the wife and two of the children returned to Iran on 5 August 2001 where they remained until 23 December 2001 when they departed Iran, using Iranian passports, without difficulty.

[22] These matters, together with other concerns, suggested that the appellants were of no interest to the Iranian authorities when the claim lodged by the wife was determined on 19 November 1997.

[23] In May 2006, the husband and the wife, the daughter and the oldest son were interviewed by the RSB in connection with matters raised in the notice. On 16 May 2007, the RSB published decisions cancelling the grant of refugee status to the appellants. This led to their appeals to this Authority.

THE RESPONDENT'S CASE

[24] At the appeal hearing, the DOL's case consisted mainly of documentary evidence compiled in the course of the refugee status officer's determination concerning the loss of the appellants' refugee status. Of particular relevance were the following:

- (a) A copy of an Iranian passport issued to the wife on 29 July 1999 in which it is recorded that she legally departed Mehrabad airport on 22 January 1997.
- (b) A copy of a letter dated 24 April 2006 from the consular and visa section of the Embassy of Japan in Wellington to the DOL. This letter advises that the husband entered Japan as a temporary visitor on 24 June 1991 and was deported from Japan on 18 August 1997.

[25] A former refugee status officer, Lea Whittingham, appeared as a witness for the DOL and confirmed the contents of a written statement dated 17 September 2007 that had been filed in opposition to the appeal. Ms Whittingham also produced into evidence a number of additional documents in support of the DOL's case. They are referred to hereafter, as relevant.

[26] Counsel for the DOL filed written opening submissions dated 4 February 2008.

THE APPELLANTS' CASE

[27] Each of the appellants gave evidence and confirmed the contents of an undated written statement filed on their behalf in October 2007, to which they had all contributed various parts.

[28] A summary of the evidence of each of the appellants follows. An assessment of this evidence appears later in this decision.

Evidence of the husband

[29] The husband is aged in his late 50s. At the time of his marriage he was working as a taxi driver. However, he supplemented his income with a number of casual jobs including working as an electrical technician, a salesman and a fruit picker. He also was involved in delivering and renting out video tapes. These video tapes were illegal because they showed music and dance shows. The video business was a small operation. The husband supplied videos to about 10 to 12 people. He sometimes stored videos at his home briefly but his house did not operate as a video centre.

[30] In the mid-1980s, the husband became involved in importing used clothing from Japan. He went to Japan for the first time in 1985 or 1986 to purchase clothing and spent three weeks there. Two or three months later he made another trip and on this occasion he stayed for one month. He made no further trips to Japan for the purpose of purchasing used clothing because the government placed restrictions on the importation of foreign goods.

[31] In 1991, the appellant's house was raided by the *Komiteh* who confiscated a number of video tapes. After this raid the husband ensured that nothing illegal was ever kept at home. Following the raid, the husband went to Japan for approximately one year. He overstayed the temporary visa he was issued on arrival in Japan. He was aware that if he left Japan on his own passport having overstayed his temporary visa he would be registered as an overstayer and would not be permitted to re-enter Japan. He was also aware that if he returned to Iran, having overstayed a permit overseas, he would have difficulties because his passport would be confiscated. He also feared problems on arrival in Iran due to his involvement with the illegal video tape business. Rather than return on his own passport and attract attention from the Iranian and Japanese immigration authorities, the appellant used the passport of another Iranian who had only recently entered Japan to return.

[32] After returning to Iran he remained there until approximately 1996. However, because of his problems with the authorities he did not live with his family most of the time but stayed away and visited them at home and at the homes of relatives.

[33] In 1995, there was another major raid on the appellants' home by the *Komiteh* and, again, illegal items such as video tapes were confiscated. The appellants had by then resumed their practice of occasionally having illegal items in their home because they had thought the passage of time since the 1991 raid made further raids unlikely.

[34] After this second major raid the husband left Iran again using the passport of a recently deceased person. He entered Thailand using this passport and spoke to his wife on one occasion and his brother-in-law on two occasions from there. In Thailand, he obtained an Italian passport which he used to enter Japan. From Japan he spoke to his wife on the telephone approximately once a week. He remained in Japan until August 1997 when he was picked up as an overstayer and deported. His Iranian passport had by this time expired, however the Iranian authorities in Tokyo placed a one month extension sticker on it to allow him to be returned to Iran with it.

[35] After being deported, the husband was met at the airport by the daughter and her aunt and uncle. He had no difficulties on arrival in Iran because he had had bribes paid on his behalf to ensure he could enter the country without attracting adverse attention from the Iranian authorities.

[36] While back in Iran between August 1997 and December 1998 the husband kept a low profile. He did nothing that would bring his name to the attention of any authorities, such as purchasing a house or a car. Neither did he drive. He spent time with his daughter but also stayed with other relatives.

[37] Using the assistance of an agent and funding the payment of between \$4,000 and \$5,000 in bribes the husband was issued a new Iranian passport in December 1997. His agent advised him that he should have his wife and children endorsed in the passport to make him look less suspicious and through bribes they were so endorsed even though their signatures should have been required for this. The payment of bribes by the agent allowed him and the daughter to leave Iran without difficulty despite the problems with the date of birth in his New Zealand visa that gave rise to difficulties in Malaysia.

[38] The husband communicated regularly with his wife in New Zealand from Iran after his deportation there in August 1997. After she was granted refugee status he arranged the documents necessary for his residence visa which was granted and endorsed in his passport. Unfortunately, the wrong date of birth had been recorded on the visa.

[39] In Malaysia he and the daughter were initially prevented from boarding their flight to New Zealand. Because of the disparity between the date of birth in his passport and in the visa the Malaysian immigration authorities suspected the visa may have been fraudulent.

[40] At the hearing, the husband produced two translated work references which relate to his employment in Tehran in 1993 and 1994.

Evidence of the wife

[41] The wife is from Tehran. She married her husband in 1980, and had her first child, the eldest son, in 1981. Approximately five years after their marriage, the husband began to travel overseas once or twice a year for a couple of weeks at a time. The purpose of these trips was to import used clothing from overseas into Iran.

[42] At the time of their marriage, the husband made a living driving a taxi. He carried on as a taxi driver after he started the used clothing business but eventually, when the clothing business became more profitable, he sold the taxi.

[43] The husband's video business started slowly. He began to have problems with the authorities because of this business in or around 1991.

[44] In 1991, the husband went to Japan where he spent a year. After he returned, he lived with the family for approximately two years.

[45] In 1995, the husband disappeared. The wife did not see him until his arrival in New Zealand in 1999.

[46] There were one or more major raids on the appellants' home, relating to the husband's illegal video business. Because of the passage of time, the wife is unclear of the dates of these raids although she remembers her husband was not present. After he left in 1995, the appellants' home was regularly raided by the *Ettela'at*.

[47] The husband occasionally sent overseas currency to the wife in Iran. On

one occasion while she was changing this currency on the black market she was arrested by members of the *Komiteh*. They took her to an office where they detained her for approximately six hours. She was released after her brother deposited the title deeds for her mother's home as security with them. When she was released, the *Komiteh* told her that they would send her a letter telling her what would be happening with her case. She did not hear from them and called at the *Komiteh* office after some time to enquire about what was happening. They told her that she needed to wait and that she would receive a letter.

[48] The wife was concerned that her currency offence would somehow be linked to her husband's political problems in court and because of this could be serious. If her husband had not had serious political problems, it would not have been difficult to make the problem with the *Komiteh* "go away".

[49] The wife decided to escape from Iran before her currency case reached court.

[50] One of the appellant's sisters was very similar to her in appearance. This sister had a son and daughter who closely resembled her two sons in age and appearance. Using the services of an agent, the wife arranged for the name of the daughter in her sister's passport to be changed to the name of her youngest son. Using this passport, she and her two sons left Iran through Mehrabad airport in January 1997. The wife had to leave the daughter behind with her grandmother because a third child could not be included on the sister's passport.

[51] The wife did not mention the husband's trips to Japan in her refugee claim. She did not think his earlier absences from Iran were relevant and thought that she should concentrate on recent events.

[52] When interviewed by the RSB on 22 October 1997, she knew that her husband had returned to Iran but, on the advice of others in the community, did not disclose this at the interview.

[53] The wife obtained a new passport from the Iranian Embassy in July 1999 and travelled to Iran with her daughter and youngest son in 2001. Her problems relating to the foreign currency matter had long since been solved. Several months after her departure from Iran, her brother had managed to bribe a contact within the *Komiteh* and the wife's file was closed. She was also less concerned about the risk of returning to Iran because of the more liberal attitude of the authorities which developed after President Khatami came to power in 1997.

[54] The wife had no difficulties during her time in Iran in 2001. While there, she attended a number of family events and also underwent two surgical procedures.

Evidence of the daughter

[55] The daughter is a married woman aged in her early 20s. She is married to an Iranian national, who is a New Zealand permanent resident, to whom she became engaged on her visit to Iran in 2001.

[56] In or around 1984 when she was aged six or seven, she recalls that the family began moving frequently in Tehran. She estimates that they moved four or five times before finally going to live with her maternal grandmother.

[57] The daughter recalls that her father would disappear for long periods of time. She estimated that his longest absence was approximately a year and recalls that when he returned from these long absences he would bring presents from overseas for the family. The fact that her father was often absent for long periods caused her difficulties at school. Her friends believed that her parents were divorced and there was a stigma attached to this.

[58] The daughter recalls being left behind by her mother and brothers when they left for New Zealand. Her father came back to Iran from Japan in August 1997. She is able to remember this date clearly as it was several days after her birthday. She recalls that she and her father had difficulties at the airport in Malaysia when they were en route to New Zealand because the date of birth in the New Zealand visa entered in his passport did not correspond to the date of birth in his passport.

[59] In 2001, the daughter visited Iran with her mother and younger brother. The main purpose of this trip was to spend time with her paternal grandmother who was recovering from injuries she received in an accident. While in Iran, the daughter spent time with friends and family and became engaged to her husband. She and her mother also underwent elective surgery because it is cheaper in Iran than in New Zealand.

[60] In 2004, the daughter and her husband made another visit to Iran. On this occasion they spent six months in Shiraz, visiting her husband's family.

[61] Although the daughter enjoys spending time in Iran, she would not like to live there permanently. This is because all her educational qualifications are from New Zealand and she would have no vocational or study opportunities in Iran and

no options available other than being a housewife. The daughter had studied towards a nursing qualification in Auckland but withdrew from her studies because of the stress she was experiencing as a result of these cancellation proceedings.

Evidence of the eldest son

[62] The eldest son is aged in his mid-20s. He is currently employed as a painter. He was at university but withdrew because of the stress he was experiencing as a result of the cancellation proceedings.

[63] The eldest son recalls that his father worked as a taxi driver when he was very young and that he then worked in a clothing business. He also had something to do with video tapes although the eldest son knew very little about this at the time. The eldest son recalls his father being frequently absent when he was a child. The longest time he recalls being apart from his father was a period of approximately three years which finished when his father and sister arrived in New Zealand in December in 1999.

[64] The eldest son is able to recall that his father was present in Iran during 1994. He is able to remember this because he started a new school that year and he remembers his father being there then.

[65] When asked, he was unable to recall ever being woken up at home in Iran when the appellant's home was searched by the authorities. Although he has a vague recollection of many people coming and going he could not specifically remember ever being present when the house was searched.

[66] The eldest son did not accompany his mother and siblings to Iran when they went there for a visit in 2001 because he feared being conscripted for military service. However, he subsequently heard that Iranian nationals who are resident overseas and who have outstanding military service obligations, are able to visit Iran without being conscripted for military service provided that their visit lasts for less than 90 days. The eldest son checked this information with the Iranian Embassy in Wellington and, after receiving confirmation that this was the case, he travelled to Iran for a visit in October 2007.

[67] Although he was pleased to have been able to visit his friends and family and in particular, to have been able to spend time with his maternal grandmother who has since died, the eldest son would not like to live in Iran now. Because of his years in New Zealand he has developed an accent in Farsi which he believes marks him out as a foreigner. He is of the view that should he be forced to

perform military service in Iran he will be mistreated and harassed because he is now “a foreigner” and he will be suspected of being a spy. He said that people in Iran could not distinguish between Australians and New Zealanders and viewed Australians as being the same as Americans because of Australia’s participation in the war in Iraq. He said that while in Iran he was harassed light-heartedly about this by his cousins but fears that in the military this type of harassment would be serious.

Evidence of the youngest son

[68] The youngest son is 17 years old. He is in his final year in high school in Auckland where he is a successful student. He plans to attend university in the future and to study science there. He was five years old when he arrived in New Zealand and is less fluent speaking Farsi than the other members of his family. He is unable to read and write Farsi.

[69] The youngest son has no memory of his father in Iran and recalls meeting him for the first time when he was approximately seven years old and his father arrived in New Zealand.

ASSESSMENT AS TO 'MAY HAVE BEEN'

[70] Prior to determining whether the appellants’ refugee status may have been procured by fraud, it is necessary to make an assessment of their credibility.

Credibility of the children

[71] The three younger appellants (the children) gave their evidence in an honest and straightforward manner. They have no personal knowledge of the events that led to their recognition as refugees and candidly admitted that they had never known the details. Although they can recall matters such as their father’s presence and absence at various times in their upbringing, and moving house on various occasions in Tehran, their recollection is affected by their ages at the time and the amount of time that has since passed. The Authority finds that the few discrepancies between their evidence on such matters is due to this rather than any attempt to mislead the Authority.

[72] The evidence of all of them regarding their trips back to Iran and the difficulties they would anticipate should they return there permanently is accepted.

Credibility of the husband and wife

[73] The Authority found neither the husband nor the wife to be entirely truthful witnesses although they were candid about some matters. When giving evidence about key events that gave rise to their refugee status, they contradicted each other and at times contradicted statements made by the wife in 1997 in support of her refugee claim. After hearing the evidence of both of them, the Authority is satisfied that a number of key facts in the refugee account presented by the wife in 1997 were untrue. An analysis of the problems with their evidence follows:

Video tape business

[74] The husband and the wife gave contradictory accounts about his illegal video tape business. The wife had originally claimed to the RSB that the husband had commenced this business in 1984 and that in the same year he had sold his taxi.

[75] When interviewed by the RSB in 2005 concerning the matters raised in the cancellation notices, the husband claimed that he started the video business in 1990. When reminded of his wife's claim that the business had commenced in 1984, he claimed that the business in illegal tapes began around 1990.

[76] In her statement filed in support of her refugee claim, the wife had indicated that the video business was the family's source of income, that it was run from home and that it involved many people coming to their home. In contrast, the husband in his evidence down-played the video tape business, representing it as one of many commercial activities he participated in which involved him delivering music and dance videos to only 10-12 people who were interested in watching them and rarely storing them in his home.

[77] The inconsistency between the evidence of the husband and the wife and the inconsistency between the evidence at the appeal and the account presented to the RSB in 1997, left the Authority in no doubt that the claims about an illegal video tape business that brought the husband to the attention of the Iranian authorities, leading him to flee Iran were untrue.

***Komiteh* raids**

[78] The husband and wife gave contradictory accounts of raids on their home by the *Komiteh* during the 1990s. The wife's evidence concerning these raids also contradicted the account of them she had presented as part of her refugee claim.

[79] When interviewed by the RSB in 2005, the husband claimed that a major raid on the appellants' home by the *Komiteh* took place in 1991. The wife had not mentioned any 1991 raid in her refugee account and had claimed that a major raid took place in 1995 (which led to the husband's disappearance).

[80] At the appeal hearing, both appellants claimed that raids took place in 1991 and 1995 although the wife was unable to give any convincing explanation for her failure to mention the 1991 raid earlier.

[81] The husband initially claimed that after the 1991 raid no illegal materials were ever stored at their home. When reminded that his wife had claimed that a major raid had occurred in 1995 and that illegal material was found and confiscated in the course of the raid, the husband changed his evidence and claimed that videos and equipment such as Xerox machines were seized in 1995.

[82] The wife claimed in her refugee account that there were regular raids on their home after the husband disappeared in 1995 including some at night that woke the children. This claim was contradicted by the children who had no recollection of being present at raids or being woken in the night when such raids took place as the wife had originally claimed.

[83] The husband's and the wife's inconsistent evidence about the claimed *Komiteh* raids on their home led the Authority to conclude that such raids did not occur and were part of a fabricated account.

Contact between husband and wife after his departure from Iran

[84] According to the account presented by the wife to the RSB in 1997, the 1995 raid precipitated the husband's disappearance. The wife had claimed that she did not hear from her husband for six months after this disappearance. She only disclosed two telephone calls from her husband between December 1995 and her departure from Iran in January 1997.

[85] In contrast, the husband gave evidence that he spoke to her from Thailand a week or so after he left Iran in late 1995, and that after he arrived in Japan, he spoke to her approximately once a week. When asked to comment on his wife's contradictory evidence, the husband retracted his evidence and claimed that he had only spoken to his brother-in-law from Thailand.

Husband's whereabouts in October 1997

[86] The wife gave untrue information concerned the husband's whereabouts when she was interviewed in connection with her refugee claim in October 2007. By this time, the husband had been deported from Japan to Iran. He had been in regular contact with the wife after returning to Iran and she knew both his whereabouts and that, despite being deported to Iran with the knowledge of the Iranian authorities, he was living with family in Tehran and experiencing no ongoing difficulties with the authorities there.

[87] At her RSB interview, the wife lied and told the refugee status officer that she had heard from her husband since arriving in New Zealand and that he was in Thailand and was attempting to get their daughter out of Iran.

[88] At the appeal hearing, the wife acknowledged that she had misled the RSB concerning her husband's whereabouts and stated that she had done so on the advice of others in their community.

Husband's presence in Japan

[89] In the account she presented to the RSB in 1997, the wife claimed that her husband had disappeared in late 1995 and that, although she initially thought he had been arrested by the *Komiteh*, she later found out he was overseas. She made no mention of any previous absences or periods overseas and gave the impression in her statement and at her interview that her husband had continuously been operating a video business in Tehran since 1984.

[90] The letter from the Japanese Embassy records that the husband entered Japan in 21 July 1991 and was deported from there on 19 August 2007. According to the husband and the wife's evidence, the husband had made trips to Japan prior to July 1991. When asked why she had not disclosed the husband's travel movements to the RSB, the wife claimed to have thought them unimportant. The result of her deliberate omission was that an incorrect and incomplete chronology was presented to the RSB.

[91] It was the DOL's case that the husband remained in Japan between 1991 and 1997. The husband claims, however, to have left Japan and re-entered Iran during this period and to have worked in Iran during the early to mid-1990s. In support of this claim he provided work references from employers in Iran relating to periods in 1993 and 1994. The two eldest children, whom the Authority has found to be honest witnesses, recall him being present in Iran around this time.

[92] It is beyond doubt that the husband initially travelled to Japan in 1991 and was deported from there in August 1997 as recorded in Japanese immigration records. The Authority accepts that the husband may have travelled out of Japan into Iran and then out of Iran again, using the passports of others in order to avoid his overstaying in Japan coming to the attention of the Japanese and Iranian authorities.

[93] The Authority has already found that the husband's and wife's evidence of an illegal video business and of *Komiteh* raids on their home is false. It follows that, whatever his movements during the period, he was not a person of interest to the Iranian authorities for political activities. Any steps he took to conceal his identity arriving in and departing again from Iran between 1991 and 1997 was for the purpose of concealing his overstaying in Japan and not because he had any need to evade the Iranian authorities for political reasons. The appellant was candid in his evidence that his work in the construction industry in Japan was well paid. We find that he spent time in Japan for financial reasons only.

[94] It follows that the husband's claim to have facilitated his entry to Iran in August 1997 and his departure in July 1998 by paying bribes is rejected. He has claimed that his lack of difficulty in departing Iran despite having different dates of birth in his passport and visa corroborates his claim to have paid a bribe to exit. This is not accepted. There are a number of other possible explanations for his ability to depart despite this mistake including it being overlooked on his departure or it not being a matter of interest.

Wife's claimed illegal departure

[95] It was accepted in the RSB decision of 19 November 1997, that the wife had left Iran using her sister's passport. At her RSB interview, she stated that her sister had the details of two sons endorsed in it which was why the wife was able to travel with her two sons. In the Confirmation of Claim form filled out by the wife on her arrival in New Zealand, she stated that she used her sister's passport but that her photograph had been substituted for that of her sister.

[96] At the appeal hearing, the children (who gave their evidence before the wife) stated that none of their maternal aunts had two sons. In her own evidence, the wife stated that her sister did not have two sons, but had a son and daughter endorsed in her passport and that an agent had arranged for the younger son's name to be substituted for that of his female cousin in the passport. She also gave evidence that the photographs in her sister's passport were not changed

because she and her sister resembled each other.

[97] The contradictions between the wife's evidence about her sister's passport and the claims she made in her refugee account lead the Authority to reject her claim to have departed Iran illegally using that passport. The Iranian passport issued to the wife in July 1999 by the Embassy in Wellington records that she made a legal departure from Mehrabad airport on 27 January 1997. The Authority finds that this is an accurate record.

Revolutionary Court

[98] The RSB decision records that the wife and two sons left Iran shortly before she was due to appear in the Revolutionary Court where she faced a lengthy period of imprisonment for her involvement in black market foreign currency trading. In the written statement filed in support of her refugee claim she stated that "a court date was set down, and I thought that I would be treated badly if I went to court because of my connection with my husband and the other people who were against the regime".

[99] At the hearing, she claimed that after her initial arrest and release she had not heard from the *Komiteh* again while in Iran and that, when she went to the *Komiteh* office to enquire as to what was happening with her case, they told her that she should simply wait to receive a letter about it from them. In her evidence, the wife down-played the seriousness of her currency offence, stating that her problem was "not big" and "not a matter for getting refugee status". She characterised her problem as insignificant compared to that of her husband and stated that the only real risk to her was if her problem was matched to his.

Conclusion – Refugee recognition procured by fraud

[100] The recognition of the entitlement of all the appellants to refugee status was based on the RSB's decision of 19 November 1997 in which findings of fact and credibility were made in respect of the wife's refugee claim. As set out in the credibility assessment above, a number of core elements of her refugee account are untrue.

[101] It was accepted in the RSB decision that the husband had run a successful, if illegal, video tape business from 1984 onwards which was the source of interest in the husband by the *Komiteh*. The claims about this business have been found to be untrue.

[102] The RSB accepted that there had been a major *Komiteh* raid on the appellant's home in 1995 followed by an ongoing series of raids. The claims about these raids have also been found to be untrue.

[103] The wife's narrative, accepted in the RSB decision, had the husband continuously in Iran until his disappearance in 1995 following the *Komiteh* raid on the appellant's home. Her concealment of her husband's travel movements in the early 1990s resulted in an incorrect and incomplete chronology being presented to the RSB.

[104] In its decision, the RSB placed considerable weight on the claims that the wife was facing a scheduled hearing at the Revolutionary Court and that she had departed illegally from Iran using her sister's passport. Both of these claims were untrue.

[105] Finally, and of considerable significance, is the fact that the wife concealed from the RSB that her husband was in Iran living with family (and was not out of Iran at all) when she was interviewed in October 1997. His circumstances were thus markedly different from those relied on in the RSB decision.

[106] The decision recognising the wife as a refugee, upon which the recognition of the other appellants as refugees was also grounded, accepted each of the elements identified above and placed weight upon them. The Authority finds that there was a causal relationship between the untrue or misleading information provided by the wife to the RSB and the recognition of her and the other appellants as refugees.

[107] As noted earlier, the term "may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information" is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. We are satisfied that in this case, that standard has been met and that the refugee status of the appellants may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information. Indeed, the omissions and falsehoods presented by the wife were such that we are satisfied that the refugee status of the appellants was in fact, procured by fraud.

[108] There is an absence of evidence before the Authority supporting the proposition that, at the time the appellants were granted refugee status, they were entitled to it.

[109] Having found that the appellants' grants of refugee status may have been procured by fraud, it is necessary to consider the second stage of the two stage test, that is, whether or not the appellants currently meet the criteria for refugee status.

THE ISSUES

[110] 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."

[111] 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?

WHETHER THE APPELLANTS SHOULD CEASE TO BE RECOGNISED AS REFUGEES

[112] The Authority has found that at the time each of the appellants departed Iran in 1997 and 1998 respectively, they were not people of interest to the Iranian authorities. The husband has provided no case for refugee status other than the one presented by his wife in 1997 which we have found to be false. There is no other basis on which he has asserted he should be recognised as a refugee. There is a complete absence of evidence before us establishing that the husband faces a real chance of being persecuted in Iran.

[113] With respect to the wife, she similarly has provided no case for refugee status other than the one presented by her in 1997 which has been found to be false. Further, since her refugee claim was determined, she has travelled to Iran in 2001 and re-entered that country through Mehrabad airport using her own legal

passport without difficulty. She spent approximately six months living in Tehran without incident, visiting family and conducting a normal life including undergoing two elective surgical operations.

[114] Her ability to do so is consistent with there being a lack of interest in her by the Iranian authorities. In respect of the wife we find that there is a complete absence of evidence before us establishing that she faces a real chance of being persecuted in Iran.

The daughter

[115] It has never been claimed by or on behalf of the daughter that she was herself at risk of being persecuted in Iran because of her parents' activities. She travelled to Iran in September 2001 with her mother and younger brother and spent six months there without difficulty. During this time she celebrated her engagement and, like her mother, underwent elective surgery.

[116] In 2005, she returned to Iran with her husband and spent six months there in the company of her in-laws. She claimed to the Authority that she would have difficulty in Iran because her New Zealand educational qualifications are incompatible with the Iranian education system and that she would have no opportunities available to her in Iran beyond being a housewife.

[117] While it is accepted that the daughter would face educational disadvantages in Iran and would have limited career opportunities there, the matters she raises cannot properly be described as being persecuted. On the contrary, we find that there is an absence of evidence before us establishing that the daughter faces a real chance of being persecuted in Iran.

[118] Finally, we turn to the predicament of the two sons. If they return to Iran, both would have outstanding military service obligations. The older son expressed a very real fear of the harassment and suspicion he, and perhaps to an even greater extent, his brother would attract because they would be perceived as being "Westerners".

[119] It is accepted that the sons may face difficulty, including a level of hostility and harassment, if they are forced to perform military service in Iran. However, there is no evidence before us that establishes that such harassment would rise to the level of being persecuted. The term 'being persecuted' is defined in refugee law as the sustained or systemic denial of basic or core human rights

demonstrative of failure of state protection: *Refugee Appeal No 2039* (12 February 1996).

[120] The older brother would face the same educational and vocational limitations as his sister because of his lack of Iranian qualifications and his English language education. The younger brother would be even more greatly disadvantaged. He cannot read and write Farsi and would essentially be illiterate should he return to Iran. These difficulties, although undoubtedly severe, even when considered cumulatively with the problems the brothers anticipate arising during military service, could not properly be considered to be a sustained or systemic denial of their basic or core human rights. Neither brother therefore faces a real chance of being persecuted in Iran.

CONCLUSION

[121] Given the complete absence of evidence before us establishing that any of the appellants face a real chance of being persecuted in Iran, the Authority finds that the first issue must be answered in the negative and the second does not accordingly arise. It is therefore appropriate to cease to recognise the appellants as refugees.

[122] The following determinations are made:

- (a) The refugee status of the appellants may have been procured by fraud.
- (b) It is appropriate to cease to recognise the appellants as refugees.

[123] The appeals are therefore dismissed.

"M A Roche"
M A Roche
Chairperson