

**AT AUCKLAND**

<b>Appellant:</b>	<b>AK (Iran)</b>
<b>Before:</b>	V J Shaw (Member)
<b>Counsel for the appellant:</b>	D Mansouri-Rad
<b>Counsel for the respondent:</b>	No Appearance
<b>Date of hearing:</b>	23 & 24 June 2011
<b>Date of decision:</b>	12 August 2011

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**DECISION**

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**INTRODUCTION**

[1] The appellant is a national of Iran. She appeals against the decision of a refugee and protection officer of the Department of Labour (DOL), declining to recognise her as a refugee under the Refugee Convention or as a protected person under either the Convention against Torture or the International Covenant on Civil and Political Rights (ICCPR).

[2] The appellant claims to be at risk of being persecuted in Iran because, following her arrest at a demonstration, she came to the attention of a senior Basij official, who demanded sexual favours on threat of punishment for her anti-government activities. The primary issue is whether the appellant's account is well-founded.

[3] The appellant's account is summarised below. The Tribunal will then assess the credibility of the account so as to establish the facts upon which the appeal will be determined.

## THE APPELLANT'S CASE

[4] The appellant is a single woman, aged 20 years. Before coming to New Zealand she was a university student. Her parents and two of her four older siblings remain living in Iran. A brother was granted refugee status in this country and a sister lives in Europe.

[5] As a teenager the appellant was especially close to and influenced by her cousin. The cousin, some two years older than the appellant, held strong feminist and anti-regime sentiments. The two girls would regularly be reprimanded by the morality police for breaches of the dress code, their persistent flouting of which they saw as "negative resistance" to the Islamic regime's restrictions.

[6] In the June 2009 presidential election, the appellant and her family voted for the reformist candidate, Mir-Houssein Mousavi. She was particularly attracted to Mousavi because he proposed making the dress code optional and would promote human rights by trying to "cut the hands off the Sepah in society". In the days following the election, the appellant and her mother and sister participated in a demonstration to denounce the electoral fraud widely believed to be behind President Ahmadinejad being declared the winner. They managed to safely flee the scene after the protest was broken up by anti-riot forces.

[7] The cousin and her brother were arrested while participating in a similar demonstration in Tehran and both were detained in Evin prison for three weeks. Before being released both had to sign undertakings not to participate in further demonstrations. The cousin was also expelled from the tertiary institute where she was studying.

[8] On 9 July 2010, the appellant, accompanied by her cousin, participated in another demonstration in support of the reformist "Green" movement. The number protesting was smaller than the year before. The appellant and her cousin had only been present for a short while when Basij arrived and started attacking the protesters. Fearful, the two young women sought refuge in a nearby shop, but they were followed by two Basij and arrested. They were taken in a van, along with a group of other women, to a nearby mosque which also served as a Basij headquarters. There the appellant was separated from her cousin.

[9] After some time the appellant was taken to a room for questioning. She was insulted and accused of having caused unrest and chaos in the country and of breaches of the dress code. Her denials that she had been attending the

demonstration were dismissed. She was eventually allowed to telephone her parents, who both came to the mosque. Her father spent over an hour speaking to the Basij commander, who eventually agreed that the appellant could be released on bail. The father left a cheque for 15,000,000 tomans and the title deed for the family home, both of which he was able to retrieve the following day after the banks opened, on payment of cash.

[10] Before releasing the appellant the commander spoke to her on her own. He warned her that although she was being released she should not think she was free of problems. She would have to appear in court and her university studies could be jeopardised. He said he would do what he could to help her, but would need to see her again. He said he would contact her to arrange an appointment and told her not to tell anyone of the arrangement or it could be bad for her.

[11] The appellant, badly frightened by her arrest, believed the commander wanted to help her, so when her parents asked what had taken place, she did as requested and told them that the commander had merely wanted to warn her about any further bad conduct.

[12] The following day the commander contacted the appellant with an arrangement that she meet him at a restaurant. He told her that he had found someone who could help with her problem and that she would be able to have a good future. A few days later he contacted the appellant again and arranged to meet her at an address he described as his workplace, but which turned out to be an apartment. The commander, many years her senior, sat close to the appellant and started touching her hand and hair. He warned her of the risk of imprisonment and expulsion from university and promised he could help. She felt uncomfortable and made an excuse to leave.

[13] Over the following weeks the appellant was summoned to meet with the commander at his apartment five or six more times. He would attempt intimacy with her and made it clear he expected her to become his temporary wife. She was horrified, but did not dare to reject his proposition outright. If she became tearful, he responded with anger and threatened that he could destroy her life in the same way as her cousin, who remained in custody. Although she was to be only a temporary wife, the appellant gained the impression that the commander was anticipating a permanent arrangement.

[14] Overwhelmed by the situation, the appellant eventually confided in her mother, who immediately informed her husband. After consideration, the

appellant's parents decided that it would be best if the appellant left Iran and they approached a cousin to find someone who could organise this.

[15] In the meantime, the appellant was advised by her parents that she should continue to meet the commander so as to avoid suspicion, but she was to insist on meeting him only at his office. She was to feign friendliness, telling him that she needed more time to consider his proposal and speak with her parents.

[16] Once the arrangements were in place for the appellant to join her brother in New Zealand, the appellant told the commander that she was going on a short trip with her parents and would then be in a position to become his temporary wife.

[17] She departed Iran for Hong Kong in late October travelling on her own legal Iranian passport, then travelled to New Zealand using a false passport. The appellant has lived with her brother since arriving in New Zealand.

[18] In the month following her departure, Etella'at officials visited the parents' home to question them about the appellant's whereabouts. The father was detained overnight.

[19] The appellant fears that if returned to Iran she will be imprisoned, raped and tortured.

#### *Evidence of the brother*

[20] The Tribunal also heard from the appellant's brother. He maintains close contact with his sister in Europe and his parents. He explained how he learned of the appellant's brief detention in July 2010 and later in September of her problems with the Basij commander. It was thought that the best option was for the appellant to join her sister in Europe, but the agent was unable to manage this and suggested New Zealand instead. He described the appellant as psychologically broken in that she remained at home most days, talked little, often cried for long periods, slept poorly and often woke crying.

[21] The brother had learned from his family of his cousin's release from prison in early May 2011. Initially she had been held incommunicado, and later transferred to Rajaei Shahr Prison (also known as Gohardashat). His mother has visited the cousin since her release and reported that she has suffered "complete devastation", lost a lot of weight and hardly talks.

[22] The Iranian authorities are aware that the brother has refugee status here as he was required to provide this information to the Iranian Embassy when he applied for a new Iranian passport.

### **Material Received**

[23] In addition to counsel's submissions, the Tribunal was provided with a statement sworn by the appellant's sister in Europe on 22 June 2011. The sister confirms her regular contact with her mother in Iran, through whom she was kept informed of the arrest of the appellant and their cousin in July 2010, the appellant's troubles with the Basij commander and the psychological suffering of her cousin since her release from prison.

[24] The Tribunal also received a report, dated 20 July 2011, from Refugees As Survivors, an organisation which provides counselling and mental health services for refugees. The report states that the appellant presented at interview on 13 May 2011 suffering from lack of sleep and intrusive memories, anxiety, depression and lack of appetite. She was tearful and clearly upset when talking about her experiences, including possible sexual abuse which she was afraid to disclose to her family. She also expressed concern for her family in Iran, especially her cousin. She described a good upbringing and being accepted to study architecture at university. She felt lonely in New Zealand, uncertain about her future and missed her family.

### **Credibility Assessment**

[25] The appellant, over time, has given a consistent, reasonably detailed and spontaneous account of events which she says led to her having to leave her family and her university studies in Iran. It is plausible and consistent with country information. The evidence as to her mental state is also consistent with the experiences she has outlined. The Tribunal therefore accepts the appellant's core account in its entirety.

### **THE LEGISLATION**

[26] This is an appeal under section 195 of the Immigration Act 2009 ("the Act"). Section 198 of the Act provides that the Tribunal must determine whether to recognise the appellant as:

- (a) a refugee under the Refugee Convention (section 129); and
- (b) as a protected person under the Convention Against Torture (section 130); and
- (c) as a protected person under the International Covenant on Civil and Political Rights ("the ICCPR") (section 131).

## **THE REFUGEE CONVENTION – THE ISSUES**

[27] 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."

[28] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

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

[29] The appellant is a young Iranian university student. Apart from receiving regular warnings about breaches of the dress code, she had not previously come to the attention of the authorities before she and her cousin were arrested in July 2010 after attending an anti-regime demonstration. Her cousin had been arrested and detained for three weeks while participating in public demonstrations in Tehran that followed the disputed June 2009 presidential elections.

[30] The appellant's father was able to negotiate the appellant's release on bail. On learning that the Basij commander had taken advantage of his official position to attempt to extract sexual favours from the appellant, who he expected to become his temporary wife, the appellant's parents arranged for her to leave Iran. About a month later, the father was detained briefly by the Etella'at for questioning

about the appellant's whereabouts. Her cousin was released from prison in May 2011 and had been traumatised by her imprisonment.

[31] The Tribunal adopts the analysis of the Refugee Status Appeals Authority, the body previously established to consider refugee appeals in New Zealand. It has interpreted the term "being persecuted" as the sustained or systemic violation of basic human rights demonstrative of a failure of state protection. In other words, the core norms on international human rights law are relied upon to define the forms of serious harm which may fall within the scope of "being persecuted". This is fully explained in *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90].

[32] In order to properly assess the appellant's predicament it is helpful to set out country information in relation to the prevailing circumstances in Iran.

[33] The United States Department of State *Country Reports on Human Rights Practices 2010: Iran* (8 April 2011) states that the government continued its campaign of post-election violence and intimidation. Security forces committed acts of politically motivated violence and repression, including torture, beatings and rape and the crack-down continued against women's rights activists, ethnic minority activists, student activists and religious minorities. There was little judicial independence and few fair public trials. Arbitrarily detained individuals were often held incommunicado for long periods, suffered poor prison conditions and maltreatment, including sexual abuse. The authorities also denied admission to or expelled hundreds of university students and professors whose views were deemed unacceptable by the regime.

[34] In its *Annual Report 2011: Iran* (13 May 2011) Amnesty International refers to continued high levels of repression, with the Iranian authorities entrenching the severe restrictions on freedom of expression, association and assembly imposed in 2009. Further:

Security officials, generally in plain clothes and without showing identification or arrest warrants, continued to arrest arbitrarily government opponents and people seen to be dissenting from officially approved values on account of their views or lifestyle. Among those arrested were human rights activists, independent trade unionists, students and political dissidents.

Those arrested were often held for long periods during which they were denied contact with their lawyers or families, tortured or otherwise ill-treated, and denied access to medical care. Some were sentenced to prison terms after unfair trials. Others sentenced after unfair trials in previous years remained in jail.

[35] Concerning the power and impunity of the paramilitary Basij and its key role in the violent suppression of demonstrations, the Department of State, in its 2010 report, observed:

“Several agencies share responsibility for law enforcement and maintaining order, including the MOIS, the Law Enforcement Forces under the Interior Ministry, and the IRGC. The Basij and informal groups known as the Ansar-e Hizballah (Helpers of the Party of God) were aligned with extreme conservative members of the leadership and acted as vigilantes. On October 4, the government announced the merger of the Basij into the IRGC ground forces. While some Basij units received formal training, many units were disorganized and undisciplined. During government led crackdowns on demonstrations, the Basij were primarily responsible for the violence against the protesters. The decentralized organization of the Basij forces contributed to individual Basijis being less accountable for their actions, further contributing to their excesses.”

[36] Counsel submits that the appellant’s risk of being persecuted arises cumulatively from her arrest by the Basij after participating in a demonstration in support of the Green pro-reform movement, that she left Iran in breach of her bail, her involvement with a senior Basij officer who sexually molested her and threatened to harm her, the fact that she is a young woman, her history of repeated flouting of the dress code and her family association with her cousin with whom she was originally arrested, and her brother, known to be a refugee in this country. In the context of the current grave human rights situation in Iran, counsel submits that the appellant’s profile exposes her to a real chance of being persecuted should she be returned to Iran.

[37] The Tribunal agrees.

[38] At the time the appellant left Iran she was on bail following her arrest in July 2010 while participating in a pro-reform public demonstration with her cousin. The Tribunal has accepted that the Iranian authorities are aware that she has left the country and finds that it is likely that she would come to their immediate attention if she was returned to Iran. Given her background and profile, the Tribunal finds that in the current climate of heightened repression in Iran, there is a real chance that the appellant will be subjected to arrest and arbitrary detention, in the course of which she will be seriously maltreated.

[39] There is also a real chance that her predicament will again be exploited by the same senior Basij officer who molested her in the past. With his official protection, she may be able to avoid detention and any further problems, as he promised her in the past, but she could do so only by agreeing to sexual relations and/or becoming his temporary wife. In the circumstances, acquiescence on her part to either so as to avoid detention and serious harm could not be considered

voluntary. It would also constitute a breach of her fundamental rights, namely Articles 7 (torture, or cruel, inhuman or degrading treatment) and 23(3) (free and full consent to marriage) of the ICCPR.

### **Conclusion on Claim to Refugee Status**

[40] The Tribunal finds that if returned to Iran, the appellant faces a real chance of being seriously harmed by state officials. Her fears of being persecuted are well-founded.

[41] The persecution feared by the appellant would be by reason of her political opinion.

### **THE CONVENTION AGAINST TORTURE – THE ISSUES**

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

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

### **Conclusion on claim under Convention Against Torture**

[43] The appellant is recognised as a refugee. By virtue of section 129(2) of the Act she cannot be deported from New Zealand. This is in accordance with New Zealand’s *non-refoulement* obligation under Article 33 of the Refugee Convention. Accordingly, as the appellant cannot be deported, she is not at risk of being tortured in Iran. She does not require protection under the Convention Against Torture.

### **THE ICCPR – THE ISSUES**

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

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

### **Conclusion on Claim Under ICCPR**

[45] Similarly, as the appellant cannot be deported to Iran, she is not at risk of being subjected to arbitrary deprivation of life or cruel treatment. She does not require protection under the ICCPR.

### **CONCLUSION**

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

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

[47] The appeal is allowed.

"V J Shaw"

V J Shaw  
Member

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