

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76017

AT AUCKLAND

<u>Before:</u>	J Baddeley (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	J M Rushton
<u>Date of Hearing:</u>	1, 2 and 3 October 2007
<u>Date of Decision:</u>	28 November 2007

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Department of Labour, cancelling the refugee status of the appellant, a national of Iran, pursuant to section 129L(1)(b) of the Immigration Act 1987 (the Act).

JURISDICTIONAL ISSUES

[2] Pursuant to section 129L(1)(b) of the Act where recognition of a person as a refugee has been given 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 section 129O(2) of the Act.

[3] Where the Authority is considering an appeal against a decision of a refugee status officer under section 129L(1)(b) there are two stages to the Authority's enquiry. First, it must be determined whether the refugee status of the appellant may have been procured by fraud. If so, it must then be determined whether it is appropriate to cease to recognise the appellant as a refugee. This 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].

[4] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of burden or onus of proof. Nonetheless it is the Authority's view that in cancellation proceedings it is the responsibility of the Department of Labour 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 the standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006).

BACKGROUND

Refugee's refugee status

[5] The appellant is aged 40. He arrived in New Zealand on 6 May 2001 and claimed refugee status at the airport. The basis of the appellant's claim was that he first experienced problems with the Iranian authorities in 1998 when complaints were made to the local gendarmerie officers that he played music which was offensive to Islam at his cafe. He was detained for several hours at the police station and mistreated for playing offensive music and criticising the regime. He was forced to sign an undertaking that he would not again come to the attention of the authorities.

[6] In November or December 2000 he was falsely charged by the Iranian police with distributing heroin and the *Satanic Verses* by Salman Rushdie. These charges were laid because the appellant had refused to continue supplying free refreshments and paying bribes to the officers at the local police station. This had culminated in the appellant physically fighting one of the police officers. When the fight was stopped the appellant went into hiding.

[7] One of his brothers was arrested and his release obtained by handing over the title deeds to the appellant's shop. His other brothers then attempted to complain to the ostensibly sympathetic chief of the police station about the bribery. They showed him the records the appellant had kept of the bribes he had paid (ostensibly money lent) to the corrupt police officers. The chief of the station tricked the appellant's brothers by refusing to return these records to them. The

appellant then discovered through a friend working at the police station that the police had assembled a file against him alleging the distribution of drugs and the illegal book.

[8] The appellant remained hiding at various addresses in Tehran and other cities for several months.

[9] He could not tolerate the fugitive lifestyle and in February 2001 decided to leave the country. He went to the passport office to apply for a new passport to replace his expired one. On returning to retrieve the new passport he was instructed to report to a different room in the office building because his passport was not ready. He believes that this room was occupied by the intelligence service. This immediately made the appellant suspect that the passport office had been advised of his problems with the local police. He left the passport office immediately.

[10] With the help of an agent he obtained a false Iranian passport in the name of a friend (who was his girlfriend's brother). He left Iran on 15 March 2001 using the false passport.

[11] On 6 May 2001 he arrived in New Zealand. He was interviewed by the refugee status officer on 27 August 2001 and 31 August 2001. He was recognised as a refugee on 28 February 2002. He later became a New Zealand citizen on 21 March 2005 and was issued with a New Zealand passport on 18 April 2005.

CANCELLATION PROCEEDINGS

[12] On 29 June 2006 the appellant was served with a Notice of Intended Determination Concerning Loss of Refugee Status in accordance with section 129M of the Act and Regulation 11 of the Immigration (Refugee Processing) Regulations 1999.

[13] In the Notice, the refugee status officer stated her preliminary view that the grant of refugee status conferred on the appellant was not properly made because it was procured by fraud and further stated the matters which gave rise to the view that the refugee claim may have been false. At the core was the Iranian passport issued to the appellant by the Iranian Embassy in Wellington on 6 May 2002 (approximately 14 months after his departure from Iran). The passport recorded that he had departed Iran legally on 17 March 2001. The appellant travelled to

Iran on that passport on 23 October 2005 and remained there until early March 2006. While in transit in Kuala Lumpur on his return to New Zealand he was interviewed by an Immigration New Zealand official, DD. According to Immigration New Zealand's Application Management System (AMS), he told DD that he had returned to Iran to visit his sick father. The appellant's father died in 1971.

[14] The Refugee Status Branch received submissions from the appellant in reply to the notice on 17 October 2006. The appellant attended the interview with the Refugee Status Branch concerning the matters raised in the Notice on 25 October 2006 and was sent a report of that interview on 23 November 2006. On 11 January 2007, counsel for the appellant sent two responses to that interview report. On 31 January 2007, the Refugee Status Branch published a decision cancelling the grant of refugee status.

[15] Prior to the appeal hearing the appellant and the Department of Labour filed submissions concerning preliminary, procedural and evidential matters. In a Minute dated 23 May 2007, the Authority issued directions requiring the filing of submissions and statements and the production of any additional evidence.

[16] Counsel for the appellant applied to the Authority for the issuance of witness summonses to two Immigration New Zealand officials who were involved in the appellant's travel back from Iran to New Zealand in March 2007. In the event the Department of Labour resolved to call these witnesses and filed their relevant briefs of evidence.

THE REFUGEE'S CASE

[17] The evidence, including documentary and oral evidence, which the appellant produced to the Authority is summarised below. It is assessed later.

How the refugee's Iranian passport was obtained and his official records cleared

[18] The appellant had left his own expired passport in the passport office in Iran in 2001. At the time of his interview with the refugee status officer he had no valid Iranian travel documentation. On 25 September 2001, he received the Refugee Status Branch interview report which contained queries about his evidence. This caused him to believe that the refugee status officer did not believe his account and might not grant him refugee status.

[19] This made him so anxious that he asked his brothers in Iran to hasten their efforts to solve his problems in Iran. They had tried various avenues and eventually advised the appellant in October or November 2001 that they had found AA, an influential official in the *Ettela'at*, who was willing and able to help them.

[20] AA was paid by the appellant's family to clear his name. In March or April 2002 his family told the appellant that AA had taken some steps towards clearing his name. To verify the efficacy of AA's work on his behalf, the family urged the appellant to apply for a passport from the Iranian Embassy in New Zealand. If the application were successful it would demonstrate that AA had successfully carried out his undertakings to the appellant's family.

[21] The appellant also wanted an Iranian passport because he wished to visit his newborn son in the United Kingdom. On 17 May 2001 he had received the news that his Iranian girlfriend had given birth to their son in the United Kingdom. The news was a shock. He did not know she was pregnant before she had left Iran (prior to his own departure) and he became most distressed. His friend and landlady, BB, gave evidence to the Authority describing him as being very sad and depressed when he received the telephone call announcing his child's birth. BB produced to the Authority a letter she had written (but not sent) to the appellant's girlfriend telling her that the appellant was miserable because of the problem between him and his girlfriend and that he had decided to go to the United Kingdom to see her and the baby.

[22] BB accompanied the appellant to the British Embassy in order to obtain a visa for his travel to the United Kingdom on his Iranian passport. Her evidence about the timing of this visit was unclear. She also was unsure whether the appellant produced his Iranian passport or some other identity document at the British Embassy. In the event he was refused a visa and could not travel to the United Kingdom on the Iranian passport containing his New Zealand residence visa. He did not make any further attempts to travel to the United Kingdom to see his child and girlfriend. BB told the Authority that the girlfriend had changed her mind about sponsoring him to come to the United Kingdom.

[23] The appellant is named as the father of the child on the child's birth certificate (a copy of which was produced to the Authority). However, he claims that he is not convinced that he is in fact the child's father and asked his girlfriend to obtain blood tests to ascertain the child's paternity. She refused. This caused a rift between them and she broke off contact with him in 2002. Two letters were produced to the Authority; one from the appellant and one from his girlfriend

concerning the birth of the child, the distress the appellant experienced about his predicament and his girlfriend's upset and indignation concerning the request for blood tests.

[24] The news about his child's birth caused the appellant to become distressed and so depressed that he sought medical treatment (a doctor's report was provided). He describes himself as "crazy" or "a mental person" at that time.

[25] He did not subsequently pursue any avenue of enquiry or attempt to establish any contact with his girlfriend. He claims that this was because he dared not approach her family or ask anyone else to do so on his behalf because of the extreme disapproval with which her family would view the knowledge of their illicit relationship and the birth of their illegitimate child. If this were known to her family it could put his girlfriend's life at risk.

[26] The appellant applied for and successfully obtained an Iranian passport from the Wellington Embassy on the pretext that he had lost his current passport. The new passport showed that he had legally left Iran on 15 March 2001 and contained a multiple departure permit which according to the appellant demonstrates that he is not wanted by the Iranian authorities.

[27] Once the appellant had obtained the new passport his family was satisfied and paid AA for his efforts. However, the appellant claims that obtaining the passport signifies only that his records at the airport in Iran had been cleared. He could still not remain there safely because the authorities still retained other prejudicial records, namely his police file, which would put him at risk in Iran.

[28] The process of expunging the incriminatory records continued until 2004 or 2005. AA carried out his work gradually. All the while the appellant's family continued paying AA on the strength of his claims that work still remained to be done in order to completely clear the appellant's name. In total they paid approximately 15 million *tomans* (approximately NZ\$22,000) in cash and gifts to AA.

[29] By 2005, AA had removed anything incriminatory from the appellant's official records. His brother told the appellant that the local police station from which his problems had emanated had been closed down. The appellant speculates that this may have occurred as a result of the corrupt practices of its officers. It was judged safe for him to return to Iran. He did so on 27 October 2005 prompted by the news of the death of one of his brothers.

[30] On arrival in Iran he was met at the airport by one brother who pointed out to him AA who was present to ensure that the appellant's arrival was unproblematic. Similarly, on his departure AA was also present at the airport.

[31] Despite AA's extensive and expensive efforts, the appellant still had to hide from officialdom in Iran. He could not move freely in public, disguised his appearance and remained inside his siblings' homes. After five months of this cloistered existence he left Iran unable to tolerate the restrictions he was compelled to observe. He also found the climate and pollution caused him respiratory problems and was happy to leave for this reason.

[32] While waiting at Kuala Lumpur airport to board the return flight to Auckland the appellant was standing in the queue with another Iranian. They were approached by a woman shouting "Where are the two Iranian refugees?". The appellant felt embarrassed and publicly humiliated.

[33] He asked her who she was and why she was treating him in that way. She asked to see his passport and repeated her question about whether he was a refugee. Once she had shown her badge identifying herself as an Immigration New Zealand official, he produced both his passports immediately (the New Zealand and the Iranian passports). He denies having told the official that he had returned to Iran to visit his sick father.

[34] The appellant's counsel filed opening submissions dated 1 October 2007 and made oral submissions during the course and at the conclusion of the appeal hearing. These are taken into account along with additional documents filed on 19 October 2007.

THE DEPARTMENT OF LABOUR'S CASE

[35] The Department of Labour's case consisted principally of documentary evidence compiled in the course of the refugee status officer's determination concerning the loss of refugee status.

[36] The Department of Labour filed written opening submissions dated 26 September 2007 and delivered oral closing submissions at the hearing. These are all taken into account. In addition, the Department of Labour filed briefs of evidence from the following witnesses:

- (a) The refugee status officer responsible for the appellant's file and attached country information concerning the security procedures followed at Mehrabad Airport and relevant reports concerning human rights abuses in Iran and the Iranian judicial system.
- (b) An Immigration New Zealand official, DD, who interviewed the appellant at Kuala Lumpur Airport on his return in March 2006.
- (c) The Immigration New Zealand official who entered into AMS, email information received concerning DD's interaction with the appellant at Kuala Lumpur Airport.

[37] DD gave the following account of her interview with the appellant at the Kuala Lumpur Airport.

[38] She had been deployed as an airline liaison officer at Kuala Lumpur Airport from December 2005 to April 2006 and one of her duties was to provide information to Immigration New Zealand which might be relevant in their assessment of people travelling to New Zealand. She recalled approaching the appellant at the boarding gate in Kuala Lumpur and checking his New Zealand passport. He told her that he had travelled to Iran to visit his sick father. Observing no Iranian departure stamps in the passport she asked the appellant if he had any other travel documents. He produced his Iranian passport and then she asked him more questions.

[39] He was accompanied by another Iranian and it appeared to her that they might be friends. She denied shouting "Where are the Iranians" and also maintained that her identification badge was clearly visible throughout her interaction with the appellant. Visible identification of officials is required by the airport authorities. She then sent an email to Border Operations, Immigration New Zealand on 5 March 2006 recording her interaction with the appellant.

FINDINGS

Refugee recognition procured by fraud

[40] The Authority finds that the refugee status of the appellant has been procured by fraud.

[41] The Authority did not find the appellant to be a truthful witness. Having heard his evidence over three days it is satisfied that :

- (a) The appellant was not so overwhelmed and distraught by the news of his son's birth that he failed to appreciate that he would not be returned to Iran immediately upon the receipt of a decline decision from the refugee status officer. This was therefore not a reason for asking his family to hasten efforts to clear his name in September/October 2001 as he claims to have done. The Authority finds that he did not do so.
- (b) The Authority finds that he did not have the problems that he claims to have encountered at the passport office in Iran in 2001.
- (c) The appellant approached and readily obtained an Iranian passport in 2002 because there was no impediment to him doing so. The multiple departure permit in that passport indicates that he was of no interest to the Iranian authorities.
- (d) The appellant legally departed Iran in March 2001 as indicated in his Iranian passport. The reasons for our findings follow.

The timing of his preparations to obtain an Iranian passport

[42] The appellant claims that he began making arrangements (by asking his family to hasten their efforts to clear his records) to obtain a passport and clear his records in September or October 2001. This was only four or five months after he had arrived in New Zealand and long before his initial application for refugee status or any subsequent appeal was determined. When asked why he had not awaited the outcome of his application for refugee status he gave various explanations:

- (a) He claims that: "I was not myself" and attributed this to his preoccupation with the unexpected news he had received on 17 May 2001 of the birth of his son. He claims this was more important to him than his own predicament. It was his principal preoccupation.
- (b) He was not aware of how his refugee application would progress or the availability of rights of appeal.

[43] When reminded that he had a Farsi-speaking lawyer experienced in refugee matters acting for him from the outset, who would have fully advised him about the procedure, he agreed that he must have been told about the procedures and the rights of appeal available and the consequential postponement of his removal from New Zealand pending the determination of any appeal. He repeated that "His brain was bombarded" with different things (principally the birth of his child) implying that he had not fully appreciated that he was at no risk of immediate removal from New Zealand (and therefore he did not need to hastily clear his name in Iran in order to obtain an Iranian passport).

[44] While accepting that extra-marital affairs may attract extreme sanctions in Iran (the appellant's reason for not attempting to contact his girlfriend again) it is unlikely that the birth of her illegitimate child could be indefinitely concealed from her family. The Authority seriously doubts that he would not have made at least some attempt at discreet enquiries about how to contact his girlfriend and child (possibly through his family or his friend, the girlfriend's brother) had his child been of such overwhelming importance to him that it caused him to disregard the procedures available to him which would allow him to prolong his sojourn in New Zealand and remain beyond the reach of the Iranian authorities or the risk of attracting their attention by a precipitate application for an Iranian passport.

Clearing his official records

[45] The appellant claims that he obtained an Iranian passport to test the efficacy of AA's efforts on his behalf and in order to visit his child in the United Kingdom. On receiving the passport AA was paid the sum of 3 million *tomans* in addition to the 2 million *tomans* the family had already paid to him.

[46] The appellant had to approach the Iranian Embassy. Enquiries would have been made to determine whether he could be issued with a passport or whether he was currently wanted by the Iranian authorities. The appellant claims he was still wanted by the police at that time. Such an application therefore risked drawing the attention of the authorities to the appellant (and possibly to his family) and to the fact of his illegal departure. He took this risk in order to test whether AA had fulfilled his promises and should be paid as agreed. Apparently the appellant's family was wary of AA's ability or willingness to clear the appellant's record. However, once satisfied by the successful issuance of the appellant's passport, his family continued paying AA a further 10 million *tomans* over the next four years.

[47] The Authority finds it highly implausible that AA took another four years to clear the appellant's official records and in particular that his family would pay another 10 million *tomans* to AA simply on the strength of his representations that further payment was warranted because of his continuing efforts.

[48] Even after four years and the payment of 15 million *tomans* the appellant still could not safely remain in Iran (other than in circumstances resembling that of house arrest).

[49] The appellant maintains that despite AA's extensive efforts on his behalf he is still today at risk on return because close investigation would reveal that his records had been altered.

[50] The entire account of AA's protracted and costly clearing of the appellant's files is highly implausible. The Authority does not accept that the appellant's family would have paid 5 million *tomans* to AA merely to obtain a passport which would not guarantee the appellant's safety beyond accessing the border in Iran, or that the appellant would be required to risk drawing official attention to himself (and potentially his family) by making an application for his passport merely to ascertain AA's bona fides. It is highly implausible to suggest that AA had "cleared" the appellant's name (by obtaining a multiple exit permit which shows that he was not wanted by the authorities) on the one hand, and yet on the other hand it was still unsafe for him to remain in Iran some five years later in 2006. AA did not clear the appellant's name to enable him to obtain a passport in 2002. The appellant did not obtain the new passport as a test of AA's efforts. He obtained the passport because he was considering travelling to the United Kingdom to see his son.

The passport office

[51] The appellant told the Authority that no summons or warrant had been issued for his arrest or requiring him to report to the court or police station because the police did not want the fact of the bribes they had received from the appellant coming to the notice of higher authorities. He was then asked why the news of his problems had reached the passport authorities given that the corrupt local police had wanted to keep secret their dealings with the appellant. He replied that this "might or might not be" because of his problems at the passport office. He then suggested that it could have been a combination of his problems with the local police station and the earlier incident in 1998 when he was detained for a few hours which caused his problem at the passport office in 2001.

[52] The Authority does not accept that the minor 1998 incident would have caused him problems at the passport office some three years later and given the secrecy imposed by the local police station regarding his 2000 problems these also would not have been known to the passport office. The Authority concludes that he did not have the problems he claims to have encountered at the passport office in Iran.

The Kuala Lumpur incident

[53] The appellant contends that on his return from Iran while in transit at Kuala Lumpur he did not tell the Immigration New Zealand official that he had visited Iran in order to visit his sick father nor was he reluctant to show her his Iranian passport. The entry in AMS and the email on which it was based also contained the details of the second Iranian passenger on the same flight as the appellant. The appellant contends that the Immigration New Zealand official mixed up his details with those of the other Iranian, a passenger travelling on the same flight.

[54] Having seen the Immigration New Zealand official give her evidence and in particular having regard to the composition of the email she sent and the AMS notes on which it was based which clearly separate the information concerning the appellant from that of the other Iranian passenger (each entry being prefaced with the name of the passenger, his date of birth and passport number), the Authority concludes that there is no such confusion as alleged by the appellant. The words attributed to him are his as was the initial reluctance to show his Iranian passport to the Immigration New Zealand official. This simply casts further doubt on the credibility of the appellant and the truthfulness of his evidence.

[55] The appellant legally obtained his Iranian passport in May 2002. This passport shows a legal departure from Iran in March 2001 and contains a multiple departure permit demonstrating that he is not wanted by the Iranian authorities. The appellant claims that he illegally departed Iran in March 2001 to escape persecution by State agents. Given its earlier rejection of the appellant's account that his record had been cleared so that a legitimate passport could be issued, the Authority concludes that he was not of adverse interest to the Iranian authorities in 2001. Had he been so, he would not have approached the Iranian Embassy in New Zealand in 2002 nor would he have been issued with a genuine Iranian passport indicating a legal departure from Iran in March 2001.

[56] The Authority accordingly rejects his story that he was in hiding from the police and at risk of being persecuted by the Iranian authorities in 2001.

[57] The Authority considers that the reasons identified above sufficiently establish that the grant of refugee status has in fact been procured by fraud.

[58] On the evidence the Authority has heard, it is satisfied that the appellant deliberately advanced a fraudulent claim to refugee status based on facts he knew to be untrue. He did so to receive the benefits which recognition of refugee status would bring knowing that he had no legitimate entitlement to these. The Authority now moves to the second stage of the two stage test which concerns whether the appellant should cease to be recognised as a refugee.

STAGE TWO

Whether the refugee should cease to be recognised as a refugee

[59] Having found the appellant's grant of refugee status has been procured by fraud, it is necessary to consider the second stage of the two stage test, that is, whether or not the appellant currently meets the criteria for refugee status.

THE ISSUES

[60] 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."

[61] 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?

[62] The Authority reiterates its findings that the appellant was not of interest to the authorities in Iran in 2001. Furthermore, his ability to legally enter and depart Iran and remain there for some five months in 2005/2006 indicates that he also was of no interest to the Iranian authorities at that time.

[63] The appellant has provided no case for refugee status other than the one advanced by him in 2001 which the Authority has found to be false.

[64] Given the complete absence of evidence before the Authority establishing that the appellant faces a real chance of being persecuted in Iran for any reason, 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 him as a refugee.

CONCLUSION

[65] The following determinations are made:

- (a) Refugee status may have been procured by fraud.
- (b) It is appropriate to cease to recognise the appellant as a refugee.

[66] The appeal is therefore dismissed.

"J Baddeley"

J Baddeley
Member