

AT AUCKLAND

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| Appellant: | AS (Iran) |
| Before: | B L Burson (Member) |
| Counsel for the appellant: | D Mansouri-Rad |
| Counsel for the respondent: | No Appearance |
| Date of hearing: | 4 October 2011 |
| Date of decision: | 17 November 2011 |

DECISION

INTRODUCTION

[1] This is an appeal under section 194(1)(c) of the Immigration Act 2009 (“the Act”) against a decision of a refugee and protection officer of the Refugee Status Branch (RSB) of the Department of Labour, declining to grant either refugee status or protection to the appellant, a citizen of Iran.

[2] The appellant claims to have a well-founded fear of being persecuted in Iran on account of his involvement in anti-government protests and for posting anti-government material on his weblog. The central issue to be determined by the Tribunal is whether the appellant has a well-founded fear of being persecuted.

[3] The appellant’s appeal is related to the appeals in *AR (Iran)* [2011] NZIPT 800209 (AA) (17 November 2011) and *AT (Iran)* [2011] NZIPT 800211 (17 November 2011) (BB). The appellants in these cases are related to him. The appeals were heard jointly and by consent of counsel the evidence of each appellant was evidence not only in their own case but also evidence in support of the other appeals.

[4] Given that the same account is relied upon in respect of all three limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

[5] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[6] The appellant was born in the mid-1980s in Tehran where he lived all his life prior to coming to New Zealand. Following his parents' divorce, some years ago, the appellant lived with his father until early 2010, from which time he lived with his mother.

[7] When in his mid-teens, the appellant encountered minor harassment from the *Basij*. On several occasions, he and his friends were detained for a few hours by the local *Basij* who took exception to their challenging their authority to question them in public places when they were doing nothing wrong. They were released upon signing an undertaking to respect the *Basij* and obey the social regulations.

[8] The appellant also got into trouble at school for asking challenging questions about theology, which his teachers objected to. On one occasion, his religious instruction teacher slapped him for challenging the teacher's interpretation of Islam in relation to the status of women. On another occasion, he was suspended for two or three days for wearing a T-shirt deemed inappropriate. Despite these problems, the appellant completed his high school and, in late 2008, enrolled in university. He left university shortly afterwards because he found the presence of the university *Basij* oppressive and the course did not touch upon the topics he expected.

[9] The appellant became involved in the rap music scene in Tehran. He and many other young people in Iran had become attracted to this form of music as the lyrics concerned social problems. The appellant made contact with two well known rap music producers in Tehran and, with a friend, made a number of recordings at their studio. The appellant and his friend released this song via an Internet music site specifically dedicated to Iranian rap artists. The appellant immersed himself in the rap scene until mid-2009 when the sites were shut down.

[10] When the election results were announced in June 2009 and Ahmadinejad declared the victor, the appellant began sending emails to people that he knew

informing them of planned demonstrations. He also spoke to customers in his father's shop. On 15 June 2009, he attended the large demonstration in Tehran with BB. They encountered no particular problem on this demonstration. The appellant began recording the demonstrations he attended on his cellphone and uploading the data to sites such as YouTube and sending the material to *Voice of America* and the *BBC's Farsi Service*.

[11] The appellant attended a demonstration on 25 June 2009 and was arrested while running away from the security forces. He was handcuffed, blindfolded and placed in a vehicle and taken to an unknown detention centre. After a number of hours he was taken to a small room for questioning. His personal and family details were taken. He was interrogated for one or two hours about involvement with opposition groups and his presence at the demonstration. When the appellant denied any involvement in the demonstration, he was beaten about his head, verbally abused, and threatened. The appellant was held for three days. A number of hours before his release he was made to fill out a questionnaire and sign an undertaking not to engage in any further anti-regime activity.

[12] When the appellant reached his home, he was in a distressed emotional state. As a teenager, he had been diagnosed with depression but by the time of his detention this had been successfully treated. His experiences in detention caused the symptoms of depression to resurface and his mother took him to seek psychiatric help.

[13] At around this time the appellant established a weblog in a false name to which he posted material critical of the regime, which contained links to other anti-regime material. He also became a member of a web group from Iran called ABC, a members-only chat room that established itself as one of the leading sites driving youth support of the Green Movement. The appellant regularly posted comments and took part in online discussions via this website. He did so in a false name. The appellant was well aware of the risky nature of this activity and therefore used sophisticated encryption and filtering devices and software which hid his ISP address.

[14] The appellant continued to attend a number of demonstrations throughout 2009. Some he attended with BB while on other occasions he went on his own. When he attended, he posted video footage onto YouTube. The appellant explained that following the clampdown on the protest movement during 2009 he did not as freely discuss the protest movement with customers in his father's shop as he had in the early stages of the protests, although he continued to do so with

people that he knew or people who he trusted were not *Ettela'at* agents. The appellant did not encounter any particular difficulties at any of the demonstrations he attended.

[15] Following the demonstrations during *Ashura* (a Shiite religious festival) in late 2009 at which a substantial number of protestors were killed, the Green Movement was driven underground and there were not many opportunities to engage in protest. Instead, the direction of the movement was towards Internet mobilisation and other forms of civil disobedience, such as defacing bank notes, both of which the appellant did. The appellant told the Tribunal that on a regular basis he copied the speeches and declarations of Mir Hossein Mousavi and other leaders of the Green Movement onto CDs and gave them to relatives to distribute in their areas. He made about 40 or 50 copies at a time.

[16] The appellant next attended a demonstration in early 2011 which had been organised by the leaders of the Green Movement ostensibly to support the revolutions that were taking place in Egypt and Tunisia. The appellant told the Tribunal that this protest had been discussed at a family gathering which had been held a number of days prior to the scheduled protest. These family gatherings were of a regular nature and at this gathering BB and AA were also present. They all thought it was less risky to attend because there was a scheduled state visit by the Turkish President. They believed the Iranian government would not dare to openly attack the protestors during such a visit.

[17] The appellant was due to attend with BB however, shortly before the demonstration BB telephoned him to say that a friend from out of Tehran was visiting and he would be going with him. The appellant's mother was not happy that the appellant was going to the demonstration at all and was very worried that he was now planning to attend alone. She therefore said that she would go with him as the demonstration was due to be held in an area near to where the appellant's father and other family members had their businesses located.

[18] The appellant and his mother went to the demonstration. After some time waiting for it to start, his mother went to a relative's house situated nearby to wait for it to begin. Sometime later, the security forces began to force the crowd back and the appellant's mother joined the appellant. Shortly afterwards, the security forces attacked and the appellant and his mother ran away. The appellant felt something hit him and realised that he was bleeding. The appellant and his mother went to a nearby hospital but were told that they could not be treated there. They went to another specialist clinic where the appellant was treated for the

minor injury he suffered. He does not know what caused the injury but believes it may have been some projectile fired by the security forces.

[19] The appellant went to his uncle's house. He told his mother to go back to her house, where he was now living, and to take his CDs and memory sticks from his room. The appellant's mother and brother did so and took this material to the relative's house where the family gatherings were held.

[20] The next day the appellant was telephoned at his uncle's house and informed that the father's shop had been raided. Sometime later they received a telephone call informing them that the authorities had been to the mother's house, searched his room and seized his computer. For the next three weeks or so, the appellant hid at a number of relatives' homes. Arrangements were made by his relative, who had worked for an airport-related business, to make arrangements for the appellant to leave the country.

[21] When he arrived at the airport this relative was there. The appellant followed the instructions he was given and managed to leave without any difficulties.

[22] Since being in New Zealand, the appellant has been in regular contact with his family. He has not heard from them of any further visits to the family home or other relatives' homes by the authorities looking for him. However, he was told approximately four or five months ago that his sister had been prevented from enrolling in university for unspecified "security" reasons. He believes his family may be hiding any further visits from him because of his psychological condition.

[23] The appellant is concerned that he has been identified as taking part in the demonstration in February 2011. Although he used sophisticated encryption material he became anxious that even though he had deleted the files the authorities may be able to retrieve them from his computer. This would reveal his anti-regime activity and comments to his weblog and on the ABC site.

Video Evidence

[24] The Tribunal was shown a number of video clips which had been recorded on the appellant's mobile phone during various protests. In particular, the Tribunal was taken to:

- (a) A number of video clips showing the appellant's attendance at the demonstration in February 2011. On one video clip the appellant is

pictured standing approximately two metres away from the camera which is evidently being held by another person. The appellant told the Tribunal that the person taking this footage was the appellant's mother. It was taken approximately 10 minutes before he was shot.

- (b) Video footage of the appellant lying on a hospital bed with a clearly visible injury. A female's voice can be heard describing the injury. The appellant told the Tribunal the person making this comment is his mother, who shot the footage. The injury in the footage was taken inside the surgery which the appellant attended to have his injury treated.
- (c) Video footage of the appellant during the *Ashura* demonstration in late 2009.
- (d) Video footage of the appellant and BB at a demonstration on 30 June 2009.

[25] The Tribunal was also shown video clips of music being performed by the appellant and another person.

[26] The Tribunal was taken to the appellant's Facebook page which is in another name. The appellant told the Tribunal that the material on the Facebook page was all posted from his home computer, which was now in the possession of the Iranian authorities. The Facebook page contained a record of things that he had posted from that computer. The Tribunal was shown one particular posting called "Investigate crimes of Ali Khamanei". This was an online petition calling for the Supreme Leader of Iran to be sent to the International Criminal Court for trial. The appellant told the Tribunal that a number of people who had been found to have had this document on their computers had been arrested. One such person was Kouhyar Goudarzi, a well known blogger who had been arrested in July 2011 and detained in Evin Prison. Other postings contained links to other members of the ABC website who had been arrested and detained, in particular, Amir Aslani.

[27] The Tribunal was also taken to the appellant's personal weblog. On the blog were 10 video footages posted by the appellant. The description of the video footage referred to demonstrations on "Quds Day and 26 Tir".

Evidence of BB

[28] BB confirmed that he had attended a number of demonstrations with the appellant. He confirmed that a few days prior to the demonstration in February 2011 the appellant, AA and he had gathered at a relative's house as part of a usual family social gathering. The demonstration was discussed and it was agreed that they should all try and attend. They did not think there would be any trouble because of the visit of the President of Turkey.

[29] BB also confirmed that when he arrived at the airport the appellant was already there and that AA arrived after him. BB confirmed that they were told by the relative who, by reason of his former employment was able to arrange their departure, to simply follow AA as he was the eldest of the three.

Evidence of AA

[30] The Tribunal heard from AA who told the Tribunal that he was related to the appellant and BB. He confirmed he saw them in Iran only at social gatherings held at a relative's house. He stated that when he was in hiding he had heard that both the appellant and BB were in trouble and that the same relative was trying to help them escape. He confirmed that he was the last to arrive at the airport. The relative who arranged their departure was able to do so because of his former employment and took care of all the arrangements. AA told the Tribunal that the relative gave him the basic instructions and told the appellant and BB to follow his lead.

Documents and Submissions

[31] On 29 September 2011, the Tribunal received written submissions from Mr Mansouri-Rad. On 4 October 2011, the Tribunal received copies of two postings from the appellant's weblog. One posting was the announcement by Mir Hossein Mousavi that he was requesting the issue of a permit for a public rally to be held on 14 February 2011 in support of the uprisings of the people in Tunisia and Egypt. Another posting was critical of the foundational constitutional principle of the Rule of the Islamic Jurists. Another compared Ali Khamanei, the Supreme Leader of Iran, to Hosni Mubarak and stated that he was worse than Mubarak, former Tunisian President Ben Ali, and Colonel Gaddafi. The Tribunal also received from counsel country information in the form of a report by the International Campaign for Human Rights in Iran *Investigate two tragic suicides of close friends of detained activist* (30 September 2011), referring to the detention of

Kouhyar Goudarzi and the suicide of two bloggers associated with him following their detention for anti-regime activities.

[32] On 2 November 2011, the Tribunal received the following country information from counsel: “Clashes reported in Iran: pro-reformist marches under way despite heavy security presence and police crackdown” *AlJazeera.net* (14 February 2011); “Police disperse Iranian protesters with tear gas” *The Independent* (14 February 2011). These reports establish that on the 14 February 2011 demonstration, the protesters attempted to converge in Azadi Square in central Tehran from various points across the city, and that up to 10,000 security personnel had been deployed to prevent that from happening. Counsel submits that this makes it more likely that individual protestors could have been identified as the appellant claims he was.

ASSESSMENT

[33] Pursuant to section 198 of the Act, the Tribunal must determine whether to recognise the appellant as:

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

Credibility

[34] The Tribunal accepts the appellant as a credible witness. His evidence was given spontaneously and in detail. It was consistent with what he had said previously. His evidence was corroborated by the other appellants with whom his appeal is joined.

[35] His claim to have been injured while on a demonstration was corroborated by video evidence and by documents on the file concerning the injury he sustained. Significantly, in one document, the medical staff record the appellant was reluctant to state how he got the injury. Country information confirms that this demonstration, organised by the opposition Green Movement to support the popular revolutions in Egypt and Tunisia, took place during a state visit by the Turkish President. See: “Turkey’s Gul, in Iran, urges respect for people power

Reuters (14 February 2011); Saban Kardas “Turkish-Iranian Economic Ties Flourish” *Eurasia Daily Monitor* Vol 8 Issue 35 (18 February 2011). Other documentation submitted confirms the former employment of the relative who helped him escape.

[36] The Tribunal therefore accepts the appellant’s evidence in its entirety.

Findings of Fact

[37] The Tribunal finds that the appellant is a person who has undertaken anti-regime political activity in Iran. He has taken part in a number of demonstrations following the disputed presidential election in 2009. In June 2009, he was detained for three days and questioned about his involvement in the protest. He suffered minor mistreatment but was released upon signing an undertaking not to take part in any further anti-government activity.

[38] In breach of this undertaking, the appellant has continued to take part in political activities. He has copied speeches of the leaders of the Green Movement onto CDs and arranged for their distribution by friends in their respective neighbourhoods. He has established and maintained a personal weblog on which he posted material critical of the regime. He was a member of the ABC website. He has also posted footage of various demonstrations onto YouTube.

[39] Following a demonstration in support of the revolutions in Tunisia and Egypt in February 2011, the appellant was shot while trying to escape the security forces suffering an injury to his ear. Subsequently, the security forces have come to his mother’s house and his father’s place of business enquiring as to his whereabouts. His home computer, which he used to post anti-regime material, has been seized. His sister has subsequently been refused permission to enrol in university on unspecified ‘security’ grounds.

[40] His claim will be assessed against this background.

The Refugee Convention

[41] 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.”

[42] 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

Relevant principles

[43] For the purposes of refugee status determination, the correct approach to interpreting “being persecuted” has been determined by the RSAA to comprise the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection – see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36]–[125]. Put as a convenient shorthand formulation, it has been expressed by the RSAA as comprising serious harm plus the failure of state protection – see *Refugee Appeal No 71427* (17 August 2000).

[44] As to the degree to which a risk of being persecuted must be established on the evidence, the RSAA has consistently adopted the approach taken in *Chan v Minister of Immigration and Ethnic Affairs* (1989) 169 CLR 379, which held that a fear of being persecuted is well-founded when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. This entails an objective assessment as to whether there is a real or substantial basis for the anticipation of being persecuted. Mere speculation will not suffice. See *Refugee Appeal No 76044* (11 September 2008) at [57].

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

[45] In the joined appeal of *AR (Iran)* [2011] NZIPT 800209 (15 November 2011), the Tribunal has examined country information relating to the post-election protest activity inside Iran and the treatment of those detained by the authorities for taking part in such activities. It noted:

- (a) Iran remains a country with a generally poor human rights record. See [32]-[33];
- (b) credible sources indicate that some persons who have been arrested and detained for taking part in post-election protest activity have been subjected to serious mistreatment including torture, rape and cruel, inhuman, or degrading treatment or punishment. See: [34]-[36];
- (c) recent prisoner releases and partial relaxation of media restrictions may relate more to the power struggle between Supreme Leader Ali Khamanei and President Ahmadinejad than signal any genuine opening up of the political space. See: [37]-[39];
- (d) while both the regime and the opposition seek to exploit the popular uprisings in Egypt, Tunisia and elsewhere in the wider region to shore up their positions in Iran, the regime is sensitive to protest organised by the Green Movement to show support for these uprisings. See: [40]-[43];
- (e) there has been a sharp rise in the use of capital punishment including persons executed for undertaking banned political activities. See: [44]-[46].

[46] An additional feature of this case is this appellant's involvement in Internet-based activity. The increased awareness and sensitivity of and use by Iran's security and intelligence apparatus of Facebook and other Internet-based social media, reflected in the country information filed by counsel, has been commented on by the Refugee Status Appeals Authority (RSAA) in a number of cases. In *Refugee Appeal No 76454* (8 March 2010), the RSAA considered the *Wall Street Journal* article submitted in this case and other country information. It noted at [59]:

"Country information establishes that the Iranian security and intelligence services, including those personnel working at the airports, are increasingly sensitised to the role new media can play as an intelligence gathering tool or as a mechanism to stifle dissent. In particular, in late 2009, a 12-person cybercrime unit was established to review websites with a view to the prosecution of persons "spreading lies" and "insults" against the Islamic system – see R Tait "Iran moves to silence opposition with internet crime unit" *The Guardian* (15 November 2009). During the 22 Bahman demonstrations, the authorities have used SMS text messages to ask people to inform on protests by texting '113' to a designated number – see Iran protests: live Blog *The Guardian* (11 February 2010). Furthermore, the WSJ article reports of person being required to declare if they have a Facebook account and, if

so, log onto it and of *Sepah* agents creating false Facebook identities to infiltrate protest groups.”

As to airport officials checking if returnees have Facebook accounts, the RSAA noted at [54]:

“The WSJ article involved interviews with 90 Iranians “living abroad” some of whom had been back to Iran following election-related activity abroad. The article records that:

‘Dozens of individuals in the U.S. and Europe who criticized Iran on Facebook or Twitter said their relatives back in Iran were questioned or temporarily detained because of their postings. About three dozen individuals interviewed said that, when travelling this summer back to Iran, they were questioned about whether they hold a foreign passport, whether they possess Facebook accounts and why they were visiting Iran. The questioning, they said, took place at passport control upon their arrival at Tehran’s Imam Khomeini International Airport. Five interviewees who travelled to Iran in recent months said they were forced by police at Tehran’s airport to log in to their Facebook accounts. Several reported having their passports confiscated because of harsh criticism they had posted online about the way the Iranian government had handled its controversial elections earlier this year.’”

[47] No further country information has been submitted to or obtained by the Tribunal in this case as to the exact nature and scope of monitoring, which remains opaque. Nevertheless, the United States Department of State *Human Rights Report 2010: Iran* (8 April 2011) (“the 2010 DOS report”) observes, at section 1f, that the Iranian authorities monitored telephone and Internet communications. It also notes their sensitivity to the use of Facebook as a mechanism for posting comments critical of the regime.

Application to the appellant’s case

[48] As with the appellants in the related appeals, it is difficult to know with certainty the extent to which the authorities will punish the appellant given his low level of involvement. He too has only had a minor part to play in the current protest movement. However, the Tribunal considers it significant that he has been identified as taking part in a demonstration in support of popular revolutions which have toppled repressive regimes elsewhere in the region.

[49] The appellant is being sought by the authorities in relation to his participation in that demonstration. While the appellant’s level of involvement is at the lower end of the scale in that he was a mere participant, country information establishes that some of those who have been detained for such low level activity have nevertheless been subjected to torture and other forms of severe mistreatment. No doubt many others have not and have been released after a few hours detention. The arbitrary nature of the regime’s response renders it difficult to predict with any certainty the fate that awaits the appellant. Factors which might indicate a more serious response include:

- (a) The appellant is wanted in connection with his taking part in demonstrations in early 2011 ostensibly in support of the revolutions in Tunisia and Egypt which have toppled repressive regimes of a longevity similar to the Islamic Republic. The implications of his participation in the protest will not be lost on the security forces. He is more likely to be considered someone who not merely disputes the outcome of the presidential election, but who is seeking the overthrow of the regime itself. This will increase their hostility towards him.
- (b) The appellant's home computer has been seized. Although he has taken steps to encrypt his on-line activity and hide his ISP address, the heightened capabilities of the regime in detecting and identifying Internet-based activity means increasing the chance that the security forces will nevertheless be able to identify his computer as the source of the postings to his weblog. In any event, he may come under severe pressure during interrogation to open his Facebook page and reveal any blogging activity which contains anti-regime material and video footage implicating him as attending other demonstrations.

[50] The observations made by the Tribunal in *AR (Iran)* [2011] NZIPT 800209 at [46] regarding the deliberate use of disproportionate punishment against low-level members of opposition movements apply just as equally to this appellant's predicament. Given the country information referred to in *AR Iran* referred to above and in *Refugee Appeal No 76454* (8 March 2010) at [41]-[50], the Tribunal finds that the appellant faces a real chance of suffering serious harm in the form of torture, or cruel, inhuman or degrading treatment or punishment in breach of Article 7 of the International Covenant on Civil and Political Rights, 1966.

[51] The appellant has a well-founded fear of being persecuted in Iran. The first principal issue is answered in the affirmative.

Nexus to a Convention Reason

[52] The jurisprudence of the RSAA makes clear the standard for establishing causation is a low one. In *Refugee Appeal No 72635* (6 September 2002) the RSAA held:

“[173] We are of the view that it is sufficient for the refugee claimant to establish that the Convention ground is a **contributing** cause to the risk of “being

persecuted". It is not necessary for that cause to be the sole cause, main cause, direct cause, indirect cause or "but for" cause. It is enough that a Convention ground can be identified as being relevant to the cause of the risk of being persecuted. However, if the Convention ground is remote to the point of irrelevance, causation has not been established."

[53] The appellant's predicament is inextricably linked to his political opinions. The second principal issue is also answered in the affirmative.

Conclusion on Claim to Refugee Status

[54] The Tribunal finds that the appellant is entitled to be recognised as a refugee under section 129 of the Act.

THE CONVENTION AGAINST TORTURE – THE ISSUES

The issues

[55] 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."

[56] Section 130(5) of the Act provides that torture has the same meaning as in the Convention against Torture, Article 1(1) of which states that torture is:

"... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Conclusion on claim under Convention Against Torture

[57] Because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Iran. The recognition of the appellant as a refugee means that he cannot be deported from New Zealand to Iran; see Article 33 of the Refugee Convention and sections 129(2) and 164 of the Act. The exception to section 129 which is set out in section 164(3) of the Act does not apply. Therefore, there are no substantial grounds for believing the appellant would be in danger of being subjected to torture in Iran.

THE CLAIM UNDER THE ICCPR

The Issues

[58] 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.”

[59] Pursuant to section 131(6) of the Act, “cruel treatment” means cruel, inhuman or degrading treatment or punishment but, by virtue of section 131(5):

- (a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards; and
- (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.

Assessment of the claim under the ICCPR

[60] Again, because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Iran. For the reasons already given in relation to the claim under section 130 of the Act, there is no prospect of the appellant being deported from this country. Therefore, there are no substantial grounds for believing that the appellant is in danger of being subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in Iran. Accordingly, the appellant is not a person who requires recognition as a protected person under the ICCPR.

CONCLUSION

[61] 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.

[62] The appeal is allowed.

"B. L. Burson"

B L Burson

Member

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B L Burson
Member