

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND

Application No 75987

IN THE MATTER OF An application pursuant to s129L of the
Immigration Act 1987 to cease to
recognise a person as a refugee

BETWEEN A refugee status officer of the Department
of Labour
APPLICANT

AND RESPONDENT

BEFORE A N Molloy (Chairperson)
B A Dingle (Member)

Counsel for the Applicant: V Wells

Counsel for the Respondent: I Uca

Date of Hearing: 20 August 2007

Date of Decision: 30 January 2008

DECISION DELIVERED BY B A DINGLE

[1] The respondent is a national of Iran who was granted refugee status by the Authority in 1999.

[2] This decision is in respect of an application made by a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) that the Authority should cease to recognise the respondent as a refugee on the ground that his recognition in 1999 may have been procured by fraud, forgery, false or

misleading representation, or concealment of relevant information (“fraud”).

JURISDICTIONAL ISSUES

[3] The application is made under s129L(1)(f)(ii) of the Immigration Act 1987 (the Act). The Authority is given the function of determining such an application pursuant to s129R(b) of the Act.

[4] In considering an application for a determination under s129L(1)(f)(ii), the Authority must first determine whether the refugee status of the respondent “may have been” procured by fraud. If so, it must then determine whether it is appropriate to “cease to recognise” him as a refugee. This will depend on whether the respondent currently meets the criteria for refugee status set out in the Refugee Convention: *Refugee Appeal No 75392* (7 December 2005) [10]-[12].

[5] Given that this is an inquisitorial proceeding, it is not entirely appropriate to use terms such as the burden or onus of proof. Nonetheless, the Authority’s view is that in cancellation proceedings, the DOL must present evidence by which it can responsibly be said that the grant of refugee status may have been procured by fraud: *Refugee Application No 75700* (28 June 2006) [12].

[6] It is also the Authority’s view that the term “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” is deliberately imprecise. It 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) [20].

BACKGROUND

THE RESPONDENT’S ORIGINAL CLAIM FOR REFUGEE STATUS

[7] In order to properly assess the application, it is necessary to outline the basis upon which the respondent was granted refugee status by the Authority. A summary of the refugee claim is set out below. It is recorded in detail in *Refugee Appeal No 71099/98* (18 March 1999).

[8] The respondent was in his early 20s when he arrived in New Zealand in July 1998. He applied for refugee status on arrival at the airport.

[9] The respondent claimed that in 1997, during his period of military service in Iran, he had been implicated in the unauthorised and unlawful release of a Kurdish political prisoner who was being held by the military. As such, the respondent claimed that he was being pursued by the Iranian authorities because he was perceived as having collaborated with the Kurdish rebels.

[10] The incident arose because a friend of the respondent, who was also serving in the military, Dr D, requested that the respondent help facilitate the Kurdish prisoner's escape. He (the respondent) did so. As a result he was detained and interrogated soon after the incident, along with other individuals who were also on duty at the time. Because there was no evidence as to whether the respondent had assisted in the escape he was punished for being careless in the exercise of his guard duty and was required to serve four months of additional military service. He served the extra time and was released from military service without further incident.

[11] Some months later, the respondent was informed by Dr D's wife that the doctor had been arrested and detained. Although the wife did not disclose the reason for his arrest, she made it clear to the respondent that he was in danger and should not remain in the family house. He immediately moved to the house of an uncle who advised him to leave Iran and made arrangements for the respondent's departure in July 1997. The respondent departed Iran by using a false Iranian passport and travelling overland by car from Iran to Turkey. He then travelled to Malaysia and, over the course of the next few months, made his way to New Zealand.

[12] Within a week or so of his departure, the authorities visited the respondent's family home with a warrant for his arrest and, when he could not be found, the respondent's brother and father were arrested and detained in his place. His father was released from detention after a few days but at the time of his DOL interview in July 1998, approximately one year after his departure from Iran, the respondent believed his brother was still in detention.

[13] On 14 July 1998, the respondent was interviewed by the RSB in respect of his claim to be a refugee. In a decision dated 30 September 1998, the RSB declined his claim, leading to his appeal to this Authority. The appeal was heard on 26 January 1999. As noted above, in *Refugee Appeal No 71099/98* (18 March 1999), the appeal was allowed and the respondent was granted refugee status. In its decision, the Authority accepted the respondent's account in its entirety.

CANCELLATION PROCEEDINGS

[14] The DOL lodged its application with the Authority on 23 November 2006. On 15 December 2006, the respondent was served with a Notice of Application for Determination Concerning Loss of Refugee Status (“the notice”) in accordance with s129S(a) of the Act and the Immigration (Refugee Processing) Regulations 1999, Reg 18.

[15] The DOL claims that the Authority’s decision to grant refugee status was improperly made as it may have been procured by “fraud”. In particular, the DOL alleges that:

- (a) contrary to his claim to have departed Iran illegally by car in July 1997, the respondent did, in fact, depart Iran on 5 July 1997 through Mehrabad airport, using his genuine Iranian passport; and
- (b) after being granted refugee status in 1999, the respondent returned to Iran in 2004 and remained there, staying with his family, for a period of approximately six months. The DOL submits that the act of returning to Iran was inconsistent with the respondent’s claim to have been at risk of being persecuted by the Iranian authorities because of his involvement with the Kurdish democratic group.

THE CASE FOR THE DOL

[16] In 1998, the respondent was granted refugee status by the Authority on the grounds that he was wanted by Iranian officials and was the subject of an imputed political opinion as a result of his association with the escape of a political prisoner. He claimed that he was forced to leave Iran unlawfully by crossing a land border using a false passport.

[17] In 2003, the respondent applied for and was issued with an Iranian passport from the Iranian Embassy in Wellington. The passport indicated that the respondent’s last departure from Iran had been made lawfully through Mehrabad airport on 5 July 1997. The new Iranian passport also contained a “Multiple Departure Permit”, an Iranian permit which entitles an Iranian living overseas to return to Iran for a limited period and leave again.

[18] In early 2003, the respondent was also issued with a New Zealand passport.

[19] On 24 April 2004, the respondent departed New Zealand and re-entered on 4 December 2004, on both flights using his New Zealand passport. After being questioned by New Zealand authorities on his return, the respondent admitted to having travelled to Iran from an intermediate point using his Iranian passport. He had stayed in Iran for a period of approximately seven months.

[20] On return from Iran, the respondent stopped off in Australia. When he returned to New Zealand the respondent stated in his arrival card that the country in which he had spent the most time while he had been overseas was Australia.

[21] The DOL asserts that these combined circumstances (the respondent's Iranian passport indicates he left Iran legally in 1997; he returned to Iran without difficulty in 2004; and he was issued with a Multiple Departure Permit) all suggest that the respondent had never been of interest to the Iranian authorities and that his claim for refugee may have been procured by fraud. The fact that on return to New Zealand in 2004 he did not disclose that he had spent most of his time in Iran suggests, it is submitted, an attempt to keep the fact of his return to Iran from the New Zealand authorities.

[22] The DOL's case consisted mainly of documentary evidence, compiled and submitted with the application. Of particular relevance, were the following:

- (a) a copy of the respondent's current Iranian passport, issued on 20 August 2003 from the Iranian embassy in New Zealand, together with translation of selected pages;
- (b) a copy of a "Passenger Arrival Card" signed by the respondent on his return to New Zealand on 4 December 2004, indicating that he had spent most of his time since April 2004 in Australia;
- (c) a copy of an airline ticket issued on 29 March 2004, indicating that the respondent had travelled from Auckland to Tehran (via Melbourne and Dubai); and
- (d) a collection of documents associated with the respondent's original claim for refugee status including his refugee application form (dated 13 January 1998), an undated statement in support of his application, records of the 1998 RSB interview and the respondent's response to the RSB Interview Report, the RSB decision (dated 30 September 1998 and the Authority decision (dated 18 March 1999).

[23] The DOL filed written opening submissions, dated 16 August 2007 and closing submissions on 29 August 2007.

[24] The refugee status officer, Mr Greig Young, appeared as a witness for the DOL and confirmed the contents of a written statement that had been filed in support of the application on 7 May 2007.

THE RESPONDENT'S CASE

[25] The respondent opposes the DOL's application. He maintains that the core of his refugee claim is true and that his refugee status was not procured by fraud.

[26] Counsel for the respondent filed a memorandum of submissions on 17 August 2007 accompanied by a letter (undated) from the respondent's brother (a barrister in Iran), a statement from the respondent's girlfriend (dated 10 August 2007) and a medical report (undated) concerning the respondent's father's medical condition. Counsel also filed written closing submissions on 27 September 2007.

[27] A summary of the evidence given by the respondent follows. An assessment of all the evidence (both for the applicant and the respondent) is made later in this decision.

[28] The respondent confirmed the contents of two written statements dated 11 April 2007 and 17 August 2007. In those statements, he provided details about his departure from Iran in 1997 and the circumstances of his visit back to Iran in 2004. He also provided some explanation as to his original confirmation of claim form and amended aspects of his evidence recorded during the processing of his original refugee claim.

[29] It was the respondent's case that the core of his refugee claim was true and that his legal departure from Iran in 1997 and his visit back to Iran in 2004 are not inconsistent with his refugee account.

[30] As noted above, the respondent maintains his account of his life in Iran up until the period approximately one week before his departure in July 1997. The respondent maintains that he was involved in facilitating the release of a prisoner (a member of the Kurdish democratic group) during his military service and that, after the completion of his military service, he was wanted by the Iranian authorities in connection with that incident. The respondent also maintains that his

friend, Dr D, was arrested by the Iranian authorities and that this arrest had sparked the respondent's concern about his own safety in Iran.

[31] After being informed of Dr D's arrest by Dr D's wife, the respondent went and stayed with an uncle who also lived in Shiraz. While in Shiraz, the respondent became aware that the authorities were also pursuing him and had visited the family home with a warrant for his arrest. On hearing that news, his uncle advised him to leave Iran as soon as possible and made arrangements to facilitate his departure through Mehrabad airport using his own passport. The respondent is unaware of the details of the arrangements that were made because he was young at the time and left all those matters to his uncle and his uncle's friend. The respondent believes that after the payment of bribes to various government contacts, he was able to leave Iran through the airport without difficulty.

[32] The respondent flew from Iran to Malaysia, where he stayed for several months before travelling to Thailand. He then stayed in Thailand for approximately two months where he made arrangements with an agent to travel to New Zealand to seek asylum. In Thailand, he was provided with a false French passport on which he travelled to New Zealand in January 1998. The respondent left his genuine Iranian passport with the agent in Thailand.

[33] For a year after departing Iran, the respondent had telephone contact with his uncle in Shiraz and his mother who visited the uncle's house to talk with the respondent. The respondent's mother told him during this time that his brother had been released from detention, but this information was contradicted by the uncle, who stated that the brother remained in detention, even at the time of the respondent's RSB interview, a year after his departure from Iran. During that first year following his departure, the respondent told his mother and uncle that he wished to return to Iran but he was told that he must remain in New Zealand for his own safety.

[34] Following the grant of his refugee status, the respondent resumed telephone contact with his father and other family members in Iran.

[35] In early 2003, the respondent applied for an Iranian passport from the Iranian embassy in Wellington, New Zealand. He did so because he had been informed by his sister during a telephone conversation that his father was seriously ill and had undergone major heart surgery.

[36] The respondent was issued with a new passport, but the passport was lost

in transit before he received it. He made an application for a further Iranian passport to be issued and this passport was duly issued by the embassy in August 2003. Although he had earlier been issued with a New Zealand passport, he did not want to travel to Iran on this passport because he had been told by his brother that, as an Iranian citizen, he must travel back to Iran on an Iranian passport.

[37] Despite having been issued with an Iranian passport, the respondent was advised by his family not to return home until they had made further arrangements to ensure that he could enter and stay in Iran without encountering difficulties. He is not aware of the details of the arrangements which were required to be made by his family, but he believes that more money was paid to government contacts to ensure his safe return. When he was informed by his family that all the arrangements were in place, the respondent booked his travel from New Zealand.

[38] He departed from New Zealand in April 2004 and spent approximately two weeks in Australia visiting his girlfriend before travelling on to Tehran. The respondent did not encounter any difficulties on entry to Iran. The following day, he travelled with his uncle to Shiraz where he was reunited with his family. Although he felt some anxiety about returning to Iran, the respondent soon relaxed and enjoyed spending time with his family.

[39] Approximately one to two months after the respondent had arrived in Iran, his father had a second minor heart operation on his heart. The operation only required a day stay in hospital. While in Iran, the respondent did not discuss in detail the father's medical situation, either with the father himself or with other family members. Nor did he glean any further information about the arrangements made on his behalf to leave Iran in 1997 or to return in 2004. As to his brother's detention in 1997, when the respondent began to apologise for the trouble he had caused his brother, his brother told him not to worry and that he (the brother) had only been detained for one week.

[40] The respondent felt extremely happy being back in Iran and spending time with his family but returned to New Zealand for the sake of his girlfriend who was very much in love with him. He departed Iran without incident in late 2004 and flew back to New Zealand via Australia.

[41] The respondent is now certain that he is no longer at risk from the authorities in Iran and that all matters relating to his earlier difficulties have been resolved by his family through the payment of bribes to government contacts.

THE AUTHORITY'S FINDINGS

STAGE 1: WHETHER REFUGEE RECOGNITION MAY HAVE BEEN PROCURED BY FRAUD

[42] The Authority finds that the refugee status of the respondent may have been procured by fraud, forgery, false or misleading misrepresentation or concealment of relevant information.

[43] The Authority did not find the respondent to be a truthful witness. Having heard his evidence, the Authority is satisfied that he was not a person of interest to the Iranian authorities at the time of his departure from Iran in 1997.

[44] The reasons for our findings are as follows.

Legal departure using his own passport in 1997

[45] In his refugee claim, the respondent claimed that he had departed Iran by crossing the land border into Turkey in a car and with a false passport. In the RSB interview he gave considerable detail about this trip and also of the subsequent months in which he claimed to have waited in Turkey, then in Malaysia and Singapore and then Turkey again while he attempted to arrange travel to either Canada or England. His final destination was, of course, New Zealand.

[46] The appellant now admits that he gave a false account of his departure from Iran in his refugee claim. He concedes that he left Iran lawfully, using his own valid Iranian passport to exit through Mehrabad airport in July 1997 and that he travelled to Malaysia, using the same passport, and stayed there and in Thailand for some time before travelling on to New Zealand. He claims that his uncle made arrangements with government contacts to ensure that he could leave Iran through regular immigration channels using his own genuine Iranian passport in 1997.

[47] Notwithstanding these concessions, the appellant asserts that his original claim for refugee status was credible and that the remainder of his account is not impugned by the admission that one part of it was false.

[48] When asked to explain his false claim to have left Iran illegally, the respondent stated that he was instructed by the agent who arranged his travel to New Zealand that he should not disclose the mode of his departure from Iran

because the New Zealand authorities would then assume he was not of interest to the Iranian authorities when he left. This explanation is rejected. There is no sensible reason why a departure by air, facilitated by bribery, should be taken as indicating a lack of interest in the traveller. It is implausible that an "agent" would so advise the appellant.

[49] Further, when asked by the Authority to clarify what measures had been taken on his behalf to ensure his safe exit, the respondent could give no details, stating that he was young at the time with the implied assertion that he had no ability to participate in the travel plans.

[50] The Authority rejects this explanation. The respondent was 22 years of age when he departed Iran, had completed his military service and then established a business of his own. He claimed to have already been through an investigative process following the escape of the Kurdish prisoner. The Authority does not accept his suggestion that he was so young and innocent that he was incompetent to help plan or at least discuss the plans for his departure. Had bribes been paid, or other arrangements been made with government contacts, it would have been essential for the respondent to have at least some knowledge of them.

[51] We find that the respondent's new claim about arrangements being made to facilitate his legal departure from Iran in 1997 is untruthful. We reject the evidence that the uncle paid bribes or made other arrangements to ensure the respondent's safe departure from Iran in 1997.

Other credibility concerns

[52] The respondent's counsel submits (Memorandum of Counsel, dated 27 February 2007) that not all aspects of the respondent's original refugee claim are relevant in the context of cancellation proceedings and that the Authority should not now concern itself with any aspects of the refugee claim apart from those which the DOL contend are false, namely the mode of departure from Iran in 1997.

[53] We disagree. The fact that the respondent concedes that an important part of his original refugee claim was untrue necessarily calls into question the credibility of the entire claim. That question of credibility can only be properly tested through an examination of the other aspects of the claim including those that the respondent asserts are not tainted by the false evidence. To deny that enquiry would frustrate the purpose of S129R of the Immigration Act and prevent the Authority from properly determining whether it should cease to recognise such

a person as a refugee, taking into account all relevant matters.

[54] The respondent's admission that he departed Iran on his own passport in 1997 is not the only matter upon which we conclude that his refugee status was procured by fraud. Our other findings follow.

The brother's detention in 1997

[55] The respondent's evidence about his brother's detention, which he claims occurred as a direct result of his problems in 1997, is vague and mobile.

[56] During the processing of his refugee claim, the respondent gave evidence to the RSB and the Authority that his brother had been detained in 1997, soon after his (the respondent's) departure from Iran, and remained in detention for approximately a year. At the time he made a response to the RSB interview report in August 1998 (more than a year after departure), the brother was said to be still in detention.

[57] However, in his second statement in response to the current application (dated 17 August 2007) the respondent stated:

"I found out later that actually my brother had been detained for one week and my father for a shorter period of time ... I only found out more of what happened to my family ...when I returned to Iran in 2004. Everything that I said before the Authority and the RSB was what I believed and knew at the time."

[58] The statement presents the new information as an unequivocal assertion of the fact that the brother was only detained for one week.

[59] However, when questioned by the Authority as to why his family in Iran would have failed to tell him about his brother's release in 1997, the respondent's evidence became mobile and inconsistent.

[60] The respondent initially confirmed his August 2007 statement and said that he now believed his brother had only been detained for one week because that is what his brother told him in 2004.

[61] When asked how long he had previously believed the detention to have been, he stated that he had thought (prior to 2004) that the detention was for a "couple of months". That is inconsistent with the evidence he gave during his claim for refugee status when he said that his brother was detained for a year. It is also inconsistent with his statement on 17 August 2007 where he confirms that previous understanding. When asked by the Authority to explain the inconsistency

in his previous understanding (between a couple of months and one year), he suggested that he had not given a definite length of detention (one year) during his refugee claim. However, his evidence as recorded in the RSB interview is unequivocal. When asked to account for it, the respondent shifted ground yet again and suggested that his uncle had told him in 1998 that his brother was still in detention but that his brother told him in 2004 that it was only for a week. He told us he believed his brother.

[62] When then asked to explain why his parents would have left him with the impression that his brother was detained long after his release, he said that they had not said anything about it, but his uncle had told him his brother was still detained. He then changed his evidence again and suggested that his mother had told him some time in 1998 that his brother was released but that his uncle had denied it. The respondent then suggested to the Authority that his mother and brother may have told him the detention only lasted a week so that he (the respondent) would not feel so guilty, the implied assertion being that the respondent now believes the brother was, in fact, detained for a year.

[63] The Authority does not accept the various explanations offered. In addition to the mobility of the evidence, we find it inherently unlikely that his family would have let him believe that his brother was detained for a year when he had been released after a week. Equally implausible is the suggestion that, when he returned home and lived with them in 2004, he would not have been told the accurate version of events. Moreover, his final assertion to the Authority that his brother may have falsely claimed that the detention was only for a week is inconsistent with his statement (August 2007) and initial evidence to the Authority that he believed that to be the true account.

Motivation for applying for passport in 2003 and returning to Iran in 2004

[64] The respondent's evidence about his motivation for returning to Iran in 2004 is undermined by inconsistencies.

[65] His evidence in his first statement in response to the application (11 April 2007) was that he initially applied for an Iranian passport in New Zealand after he heard that his father had undergone major heart surgery and was ill. He confirmed this to the Authority and stated that at the time that he applied for the passport his father had already undergone the surgery.

[66] The appellant applied for his first Iranian passport in early 2003. Although

he cannot recall the exact timing of his passport application, he confirmed that his second passport was issued on 20 August 2003 and so the application for the first passport (which was lost in transit) must have been some months before.

[67] He explained that he needed a passport because he had to return to Iran to see his father. He made this decision only after learning of his father's illness.

[68] However, according to the undated medical certificate, his father's heart surgery only took place in September or October 2003. That was after the second (replacement) passport was issued and many months after he first applied for an Iranian passport.

[69] In other words, the father's serious illness and heart surgery cannot have been the event which motivated the respondent to apply for a passport.

[70] When asked to explain the inconsistency, the respondent said that he was confused by the dates but maintained that the motivation for his travel was because his sister had told him his father was ill. He then suggested that he may have been confused between his father's first and second heart surgery and that because he was not in Iran he did not know the details of his father's medical procedures. He also claims that he did not get further information about his father's surgery during the time he lived in Iran.

[71] The Authority rejects this explanation because the medical certificate cannot be reconciled with his previous unequivocal answers about the timing and motivation for his travel, namely his father having undergone major heart surgery.

[72] Further, it is implausible that, having travelled to Iran to see his sick father and living with his family for six months, he would not have ascertained the details about his father's illness, including the fact that the heart surgery had already taken place. His suggestion that he may have confused the major heart surgery (detailed in the medical certificate) with a minor procedure completed in a day-stay during the respondent's visit to Iran is neither believable nor consistent with the medical certificate.

[73] Moreover, the respondent's claim to have been anxious to get his passport so that he could visit his sick father and to have delayed his travel only until his family made necessary arrangements for his safety is contradicted by the fact that he had a two week holiday in Australia to visit his girlfriend en route to Iran. This leads to the finding that the travel to Iran was clearly not a response to his father's urgent and serious medical condition. Were it so, the Authority is in no doubt that

the respondent would have travelled direct to Iran at the first opportunity.

Circumstances leading to departure from Iran in 1997

[74] In his refugee claim, the respondent claimed that a warrant for his arrest was taken to his parents' house after he had left Iran, at the same time as his brother was taken into custody.

[75] In contrast, the respondent told the Authority during the cancellation interview that the warrant for his arrest was issued and taken to his parents' house before he left Iran, while he was staying at his uncle's house in Shiraz.

[76] Further, he specifically stated that it was because of the existence of the warrant that his uncle told him he must leave Iran and that arrangements were subsequently made for his departure.

[77] When asked to explain this clear contradiction the respondent's evidence became vague. He maintained his evidence that the warrant was issued and delivered while he was still in Shiraz and that this was the cause of his departure, but could not explain why his original account had been so different in this respect.

[78] The Authority does not accept that the respondent's inconsistent evidence about the timing of the warrant is the result of a memory lapse. It is not believable that the event that the respondent now claims to have triggered his departure from Iran would have been recalled incorrectly by him during his first refugee claim, within a year of the events taking place. It is also unbelievable that the respondent would not now correctly remember the event which triggered his departure from Iran, had it genuinely been related to the authorities pursuing him.

False information in Confirmation of Claim form

[79] The credibility of the original refugee claim is also undermined by false information which he included in his Confirmation of Claim form, dated 13 January 1998. In it, the respondent claimed to have been a member of a pro-Kurdish political organisation. He claimed to have been a member since 1994 and gave details about his immediate superior and the national leader and claimed to have made a speech to other soldiers about the group. The respondent conceded later in his refugee claim that he had not been a member of this party or made political speeches to his fellow soldiers.

[80] When asked by the Authority why he included false information in his claim

form rather than the account he now claims to be true, the respondent said he did so because he thought that if he was deported back to Iran it would be dangerous for him to have revealed the true nature of his difficulties there.

[81] The Authority does not accept that explanation. The appellant claimed to have fled from Iran because of his imputed acts on behalf of a Kurdish political prisoner. Aligning himself with a pro-Kurdish political movement to which he did not in fact belong would not have diminished any risk to him upon return. On the contrary, it would have exacerbated the problem.

[82] It is implausible that, had the respondent genuinely sought to disguise the nature of his difficulties in Iran, he would have claimed to be a member of a pro-Kurdish group in his claim form.

Other documents

[83] The Authority notes that the respondent also submitted a statement from his girlfriend (dated 10 August 2007) and a letter from his brother in Iran (submitted under cover of a letter of 17 August 2007). Neither of these two documents specifically address the issues of relevance in this application, namely the grounds on which the respondent originally claimed refugee status or the manner in which he claims to have been able to return to Iran in 2004. Given the credibility findings made in this decision, the documents are not given any weight.

CONCLUSION ON CREDIBILITY

[84] Considered cumulatively, the matters identified above establish that the grant of refugee status to the respondent "may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information" for the purposes of s129R(b) of the Act.

[85] In summary, the appellant obtained refugee status by claiming that he was at risk of serious harm for reasons of an imputed political opinion as a result of his association with the escape of a political prisoner. He claimed that he was forced to leave Iran unlawfully by crossing a land border using a false passport. The inference was that it would have been too dangerous for him to leave by air using his own passport, because the risk of being identified and apprehended at the airport was too high.

[86] He now admits that he did leave Iran by air, using his own passport, and

admits that he was able to do so without being detected. It is also clear that his claim when he arrived in New Zealand in 1998 was false in another particular, namely, that he was associated with a Kurdish political organisation.

[87] Furthermore, the respondent has given inconsistent accounts about the timing of the arrest warrant and whether it had any connection to his decision to leave. He has also given demonstrably false evidence about the fate which befell his brother after his departure.

[88] The Authority is satisfied that the respondent's departure from Iran in 1997 was legal. This leads us to conclude that at the time of his departure he was of no interest to the Iranian authorities because it is inconsistent that a person wanted by the authorities could effect lawful departure.

[89] The Authority finds that the respondent fraudulently advanced a claim to refugee status based on an assertion of facts which he knew not to be true. He did so with the intention of gaining recognition of refugee status knowing full well that he did not in any way have a legitimate claim to fulfil the refugee definition.

[90] The Authority now turns to consider the second stage of the two stage test.

STAGE 2: WHETHER THE RESPONDENT SHOULD CEASE TO BE RECOGNISED AS A REFUGEE

[91] Having found that the respondent's grant of refugee status may have been procured by fraud, forgery false or misleading representation or concealment of relevant information, it is necessary to consider the second stage of the two stage test, that is, whether the respondent currently meets the criteria for refugee status.

THE ISSUES

[92] 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."

[93] 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?

[94] As noted above, the Authority finds that the respondent has at no time been a person of interest to the Iranian authorities.

[95] The respondent has provided no case for refugee status other than the one presented by him in 1997 which the Authority has found to be false. The respondent also concedes that he no longer has a well-founded fear of being persecuted in Iran and that he can return there and live without difficulty at any time. While that concession was predicated upon the false claim that bribes had facilitated his safe return, the reality is that no bribes were ever necessary because he was never at risk.

[96] Given the complete absence of evidence before the Authority establishing that the respondent faces a real chance of being persecuted in Iran for any Convention reason, we find 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

[97] The following determinations are made:

- (a) The refugee status of the respondent may have been procured by fraud, forgery false or misleading representation or concealment of relevant information.
- (b) It is appropriate to cease to recognise him as a refugee.

[98] The application is therefore granted.

"B A Dingle"
B A Dingle
Member